United States Court of Appeals

for the Second Circuit

APPENDIX

75-5024

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-5024

B

P/S

HARVEY R. MILLER, as Trustee in Bankruptcy of IRA HAUPT & Co., a Limited Partnership, Bankrupt,
Plaintiff-Appellant,

—against—

NEW YORK PRODUCE EXCHANGE *et al.*,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

Volume I

(Pages 1a – 684a)

UNITED STATES COURT OF APPEALS
FILED
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4-11-66	Filed Complaint and Issued Summons. (R. 1)
9-20-66	Filed Answer of Defendant MacDonald. (R. 10)
9-20-66	Filed Answer of Defendant Usiskin & Co. (R. 11)
9-20-66	Filed Answer of Defendants N.Y.P.E. and Berg. (R. 12)
9-20-66	Filed Answer of Defendant Fashena. (R. 13)
9-20-66	Filed Answer of Defendants New York Produce Exchange Clearing Association, Weinstein and Boyer. (R. 14)
9-21-66	Filed Answer of Defendant Merrill Lynch, Pierce, Fenner & Smith, Inc. (R. 16)
9-21-66	Filed Answer of Defendant Anderson. (R. 17)
9-26-66	Filed Answer and Counterclaim of Defendant Fahnestock & Co. (R. 19)
9-28-66	Filed Answer and Counterclaim of Defendants Bunge Corp. and Klein. (R. 20)
8-8-67	Filed Stipulation and Order withdrawing with Prejudice Counterclaim of New York Produce Exchange. (R. 78)
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9-12-68	Filed Plaintiff's Reply to Counterclaim of Defendant Bunge Corp. (R. 87)
3-14-69	Filed Deposition of Carl R. Berg. (R. 89)
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10-29-73	Filed Transcript of Deposition of McHale. (R. 191)
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9-2-75	Filed Consent Pretrial Order, Carter, J. (R. 257)
9-26-75	Filed Supplemental List of Plaintiff's Exhibits and Defendants' Objections. (R. 266)
10-20-75	Filed Memorandum in Support of Motion of Harry B. Anderson and Merrill Lynch for a Directed Verdict. (R. 273)
10-21-75	Filed Motion for Directed Verdict on Behalf of Defendants Walter C. Klein and Bunge Corporation. (R. 274)
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10-28-75	Filed Brief in Support of Motion of Defendants Harold H. Vogel and Continental Grain Co. for a Directed Verdict. (R. 278)
10-28-75	Filed Plaintiff's Supplemental Requests to Charge. (R. 280)
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11-25-75	Filed Transcript of Record of Proceedings for October 1, 2, & 3, 1975. (R. 296)
11-25-75	Filed Transcript of Record of Proceedings for September 26, 29, & 30, 1975. (R. 297)
11-25-75	Filed Transcript of Record of Proceedings for October 23, 24, & 25, 1975. (R. 298)
11-25-75	Filed Transcript of Record of Proceedings for October 6, 7, 8, & 9, 1975. (R. 299)
11-25-75	Filed Transcript of Record of Proceedings for October 17, 20, 21 & 22, 1975. (R. 300)
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11-25-75	Filed Transcript of Record of Proceedings for October 10, 14, 15 & 16, 1975. (R. 302)
11-25-75	Filed Transcript of Record of Proceedings for September 16, 1975. (R. 303)
11-25-75	Filed Transcript of Record of Proceedings for September 17, 18, 19 & 22, 1975. (R. 304)

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DATE	PROCEEDINGS
12-3-75	Filed Stipulation & Order Dismissing Amended Complaint with Prejudice against Defendants Fahnestock & Co., Carl R. Berg, Lucy W. Miller, Max J. Rosenberg & Ira E. Schein Executors of the Last W l of Solomon J. Weinstein, deceased; & David L. Boyer, pursuant to Rule 54(b) F.R. Civ. P., Carter, J. (R. 305)
12-2-75	Filed Judgment that the Defendant New York Produce Exchange shall have Judgment dismissing the Amended Complaint & further that Plaintiffs shall have Judgment against Defendant New York Produce Exchange dismissing the Counterclaim, Carter, J. (R. 306)
12-30-75	Filed Plaintiff's Notice of Appeal to the United States Court of Appeals for the Second Circuit from the Judgment entered on 12/4/75. (R. 307)
1-2-76	Filed New York Produce Exchange's Notice of Cross-Appeal. (R. 308)
1-15-76	Filed Plaintiff's Requested Charge to Jury. (R. 310)
1-15-76	Filed Plaintiff's Consolidated and Amended Requests to Charge. (R. 311)
1-15-76	Filed Memorandum in Opposition to Motion by Defendants Bunge & Klein regarding certain evidence. (R. 312)
1-15-76	Filed Plaintiff's Notice of Designation of Exhibits. (R. 313)

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1-27-76	Filed Defendants' Notice of Cross-Designation of Exhibits. (R. 315)
1-30-76	Filed Stipulation of Dismissal with respect to New York Produce Exchange Clearing Association. (R. 316)
1-30-76	Filed Final Judgment, per Carter, J. (R. 317)
1-31-76	Filed Notice of Appeal (Plaintiff). (R. 318)
5-26-76	Filed Deposition of Solomon J. Weinstein. (R. 322)
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5-26-76	Filed Deposition of George Stafford. (R. 329)
5-26-76	Filed Answer of Defendants Continental Grain Co. and Harold H. Vogel. (R. 330)
5-26-76	Filed Stipulation between the parties in *Seligson* v. *Bunge Corp. and Walter Klein,* filed November 23, 1973. (R. 335)

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DATE	PROCEEDINGS
5-26-76	Filed Release between the parties in *Seligson* v. *Bunge Corp. and Walter Klein,* dated November, 1973. (R. 336)
5-26-76	Filed Brief of Plaintiff in *Seligson* v. *Bunge Corp. and Walter Klein.* (R. 337)
5-26-76	Filed Opinion of Whipple, J., filed January 31, 1969 in *Seligson* v. *Bunge and Klein.* (R. 338)
5-26-76	Filed Plaintiff's Proposed Voir Dire Questions. (R. 339)
5-26-76	Filed Defendants' Proposed Voir Dire Examination of Prospective Jurors. (R. 340)
5-26-76	Filed Plaintiff's Objections to Defendants' Voir Dire Questions and Suggested Changes. (R. 341)
7-22-76	Filed Excerpts of Depositions of Richard Forti
7-22-76	Filed Supplemental Designation of Exhibits

Amended Complaint

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

CHARLES SELIGSON, as Trustee in Bankruptcy of IRA HAUPT & CO., a Limited Partnership, Bankrupt,	:	
Plaintiff,	:	
-against-	:	
NEW YORK PRODUCE EXCHANGE; NEW YORK PRODUCE EXCHANGE CLEARING ASSOCIATION; DONALD V. MacDONALD; FAHNESTOCK & CO.; HARRY B. ANDERSON; MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED; WALTER C. KLEIN; BUNGE CORPORATION; HAROLD H. VOGEL; CONTINENTAL GRAIN COMPANY; SIDNEY FASHENA; I. USISKIN & CO.; CARL R. BERG; SOLOMON J. WEINSTEIN and DAVID L. BOYER,	:	66 Civ. 1016
Defendants.	:	

AMENDED COMPLAINT

Plaintiff Demands Trial by Jury

Plaintiff, by his attorneys, Weil, Gotshal & Manges, for his complaint herein, alleges, upon information and belief except as to paragraphs 1, 2, 3, 5, 6 and 7 hereof, as follows:

1

JURISDICTION AND VENUE

1. This action is brought under the Commodity Exchange Act (7 U.S.C. §1-17a), to recover damages resulting from defendants' violation of said Act, under Sections 4 and 12 of the Clayton Act (15 U.S.C. §§15 and 22), and Section 1 of the Sherman Act (15 U.S.C. §1), to recover treble damages for the violation by the defendants of Section 1 of the Sherman Act, and under Section 70e of the Bankruptcy Act, 11 U.S.C. §110(e), to void a transfer made and suffered by plaintiff to defendant New York Produce Exchange Clearing Association.

2

2. The matter in controversy exceeds the sum or value of $10,000.00 exclusive of interest and costs.

3. This Court has jurisdiction of this action by virtue of 28 U.S.C. Sections 1331 and 1337.

4. Each defendant is an inhabitant of or may be found in the Southern District of New York and in the case of each corporate or partnership defendant transacts business in the Southern District of New York.

II

THE PARTIES

5. At all times hereinafter mentioned, IRA HAUPT & CO. (hereinafter referred to as "Haupt") was a limited

partnership formed in accordance with the laws of the State of New York and was engaged in a general securities and commodities brokerage and commission business, formerly with an office and principal place of business at No. 111 Broadway, New York, New York. During 1963 and for many years prior thereto, Haupt was registered with and represented in membership on the New York Produce Exchange and was a clearing member of the New York Produce Exchange Clearing Association.

6. On March 23, 1964, an involuntary petition in bankruptcy was filed against Haupt in the United States District Court for the Southern District of New York. Said proceedings were referred generally to the Hon. Edward J. Ryan, Referee in Bankruptcy and on June 26, 1964, said Referee in Bankruptcy entered a decree adjudging Haupt a bankrupt. On October 6, 1964, plaintiff was duly appointed Trustee of the bankrupt estate of Haupt and thereafter qualified, and plaintiff is presently the duly qualified and acting Trustee in Bankruptcy of Haupt.

7. This action is instituted pursuant to leave of the Hon. Edward J. Ryan, by order dated March 21, 1966.

8. Defendant New York Produce Exchange (hereinafter referred to as "Exchange"), a membership corporation organized and existing under the laws of the State of New York, maintains an exchange and other facilities for the purchase and sale of commodity futures contracts at No. 2 Broadway, New York, New York.

9. Defendant New York Produce Exchange Clearing Association (hereinafter referred to as "Association"), a stock corporation organized and existing under the laws of the State of New York, maintains facilities for the clearance of commodity futures contracts purchased and sold on the Exchange at 60 Beaver Street, New York, New York.

10. Pursuant to the Charter and By-Laws of the Exchange: membership in the Exchange is limited to individuals, and organizations seeking the privileges of membership in the Exchange must be registered on the Exchange through a partner, in the case of partnerships, and through an authorized person in the case of corporations; and management of the Exchange is vested in a Board of Managers consisting of the President, Vice-President, Treasurer and twelve Managers who must be fairly apportioned from among the various branches of trade interests represented in the Exchange.

11. Defendant Donald V. MacDonald (hereinafter referred to as "MacDonald") was at all times hereinafter mentioned a member of the Exchange, the President of the Exchange, a member of the Exchange's Board of Managers and Chairman of its Executive Committee.

12. Defendant Falmestock & Co. (hereinafter referred to as "Falmestock"), a partnership formed in accordance with the laws of the State of New York, is engaged in a general securities and commodities brokerage and commission business in various states of the United States and in the City of New York, with its principal place of business at No. 65 Broadway, New York, New York.

13. At all times hereinafter mentioned, MacDonald was the manager of the commodity department of Falmestock and acted as Falmestock's agent, representative and alter ego and under its direction and control with respect to his membership in the Exchange and his activities thereon. By virtue of MacDonald's or other's membership in the Exchange, Falmestock is registered with the Exchange and enjoys the rights and privileges of a firm represented in membership on the Exchange, and is subject to the duties and obligations of such membership.

14. Defendant Harry B. Anderson (hereinafter referred to as "Anderson") was at all times hereinafter mentioned a member of the Exchange, a member of the Exchange's Board of Managers and its Executive Committee, and Chairman of the Exchange's Business Conduct Committee and Cottonseed Products and Soybean Oil Committee.

15. Defendant Merrill Lynch, Pierce, Fenner & Smith, Incorporated (hereinafter referred to as "Merrill Lynch"), a corporation organized and existing under the laws of the State of Delaware, is engaged in a general securities and commodities brokerage and commission business in various states of the United States and in the City of New York, with its principal place of business at 70 Pine Street, New York, New York.

16. At all times hereinafter mentioned, Anderson was a Partner or Vice-President of Merrill Lynch and acted as Merrill Lynch's agent, representative and alter ego and under its direction and control with respect to his membership in the Exchange and his activities thereon. By virtue of Anderson's or other's membership in the Exchange, Merrill Lynch is registered with the Exchange and enjoys the rights and privileges of a firm represented in membership on the Exchange, and is subject to the duties and obligations of such membership.

17. Defendant Walter C. Klein (hereinafter referred to as "Klein") was at all times hereinafter mentioned a member of the Exchange, and a member of the Exchange's Board of Managers and its Executive Committee.

18. Defendant Bunge Corporation (hereinafter referred to as "Bunge"), a corporation organized and existing under the laws of the State of New York, is engaged in the business, among other things, of buying and selling commodities in various states of the United States and

in the City of New York, with its principal place of business at 1 Chase Manhattan Plaza, New York, New York.

19. At all times hereinafter mentioned, Klein was the President and a director of Bunge and acted as Bunge's agent, representative and alter ego and under its direction and control with respect to his membership in the Exchange and his activities thereon. By virtue of Klein's or other's membership in Exchange, Bunge is registered with the Exchange and enjoys the rights and privileges of a firm represented in membership on the Exchange, and is subject to the duties and obligations of such membership.

20. Defendant Harold H. Vogel (hereinafter referred to as "Vogel") was at all times hereinafter mentioned a member of the Exchange, the Vice-President of the Exchange, and a member of the Exchange's Board of Managers and its Executive Committee.

21. Continental Grain Company (hereinafter referred to as "Continental Grain"), a corporation organized and existing under the laws of the State of Delaware, is engaged in the business, among other things, of buying and selling commodities in various states of the United States and in the City of New York, with its principal place of business at No. 2 Broadway, New York, New York.

22. At all times hereinafter mentioned, Vogel was a Vice-President of Continental Grain and acted as Continental Grain's agent, representative and alter ego and under its direction and control with respect to his membership in the Exchange and his activities thereon. By virtue of Vogel's or other's membership in the Exchange, Continental Grain is registered with the Exchange and enjoys the rights and privileges of a firm represented in membership on the Exchange, and is subject to the duties and obligations of such membership.

23. Defendant Sidney Fashena (hereinafter referred to as "Fashena") was at all times hereinafter mentioned a member of the Exchange, the Treasurer of the Exchange, a member of the Exchange's Board of Managers and its Executive Committee.

24. Defendant I. Usiskin & Co. (hereinafter referred to as "Usiskin"), a partnership formed in accordance with the laws of the State of New York, is engaged in a general commodities brokerage and commission business in various states of the United States and in the City of New York, with its principal place of business at No. 32 Broadway, New York, New York.

25. At all times hereinafter mentioned, Fashena was an employee or partner of Usiskin and acted as Usiskin's

agent, representative and alter ego and under its direction and control with respect to his membership in the Exchange and his activities thereon. By virtue of Fashena's or other's membership in the Exchange, Usiskin is registered with the Exchange and enjoys the rights and privileges of a firm represented in membership on the Exchange and is subject to the duties and obligations of such membership.

26. Defendant Carl R. Berg was at all times hereinafter mentioned the full-time Managing Director of the Exchange.

27. Defendant Solomon J. Weinstein was at all times hereinafter mentioned the President of the Association and Chairman of its Board of Directors.

28. Defendant David L. Boyer was the full-time Manager of the Association since July 1, 1963 and is presently the Secretary-Treasurer of the Association.

III

Co-Conspirators

29.(a) The following individuals and companies are not made defendants herein but are named as co-conspirators. Each participated in the acts and failures to act and in the combination and conspiracy hereinafter alleged. At all times hereinafter mentioned, the individuals named as co-conspirators were members of the Board of Managers of the Exchange and were acting in such capacity under the direction and control of, and as agents, representatives and alter egos of the respective companies named as co-conspirators:

Individual Co-conspirator	Position in the Exchange	Company Co-conspirator
Milton Goldfogle	Member of the Board of Managers	Floor broker-No company affiliation
Thomas Gowdy	Member of the Board of Managers	T. F. Gowdy & Co.
Wallace W. Hyde	Member of the Board of Managers	Cargill, Incorporated
Otto F. Rehders	Member of the Board of Managers	H. Hentz & Co.
Dirk D. Van Linschoten	Member of the Board of Managers	Louis Dreyfus Corporation
Dominick R. Comenzo	Member of the Board of Managers	D. R. Comenzo & Co., Inc.
Arthur V. Crofton	Member of the Board of Managers	E. F. Hutton & Company, Inc.
James V. Gurge	Member of the Board of Managers	Holland America Line
Carl E. Preston	Member of the Board of Managers	Floor broker No company affiliation
William B. Tucker	Member of the Board of Managers	The Van Iderstine Co.

(b) The following individuals and companies are not made defendants herein but are named as co-conspirators. Each participated in the acts and failures to act and in the combination and conspiracy hereinafter alleged. At all times hereinafter mentioned, the individuals named as co-conspirators were officers and/or directors of the Association and were acting in such capacities under the direction and control of, and as agents, representatives and alter egos of the respective companies named as co-conspirators:

Individual Co-conspirator	Position in the Association	Company Co-conspirator
Charles B. Vose	Vice-President —Director	Kohlmeyer & Co.
J. Antonio Zalduando	Secretary-Treas. —Director	Orvis Brothers & Co.
Perry E. Moore	Ass't Sec'y-Treas. – Director	Robert Moore & Co.
Sidney Tessler	Director	Bache & Co., Incorporated
L. Hudson Leathers	Director	Hayden, Stone Incorporated
Harry A. Zoeller	Director	H. Hentz & Co.

IV

Background of the Violations Alleged

30. On April 19, 1862, the Exchange was incorporated as the New York Commercial Association by an Act of the Legislature of the State of New York. On February 13, 1867, by an Act of the Legislature of the State of New York its name was changed to the New York Produce Exchange.

31. The Exchange was organized for the purpose of providing facilities for engaging in transactions involving the purchase and sale of contracts calling for the future delivery of commodities and to inculcate just and equitable principles of trade. Transactions in contracts calling for the future delivery of domestically produced agricultural commodities, commonly known as "futures contracts", are affected with a national public interest and are carried on by members of the general public located throughout the United States and by persons located throughout the United States who are engaged in the business of buying and selling such commodities and the products and by-products thereof in interstate commerce. With the exception of price, the essential terms of the futures contracts bought and sold on the Exchange are specified by the Exchange.

32. Included among the facilities furnished by the Exchange for the purchase and sale of futures contracts thereon, and an integral part thereof, is the clearance of

such contracts through the Association, a process by which the Association becomes substituted as a seller to the buyer and as a buyer to the seller upon all futures contracts made on the Exchange.

33. Pursuant to Exchange rules, all futures contracts made by members of the Exchange must be cleared through the Association, and all such contracts are subject to the Charter, By-Laws and Rules of the Association. Under the By-Laws of the Association, the privilege of clearing contracts through the Association is limited to clearing members of the Association and only members of the Exchange or those enjoying the privileges of Exchange membership may become clearing members of the Association.

34. Pursuant to the By-Laws of the Association, certain financial liabilities and obligations are imposed upon the individual clearing members of the Association including but not limited to individual liability to the Association for losses brought about by the default of a clearing member and individual liability for any money judgment or decree entered against the Association. Included among the clearing members of the Association are defendants Fahnestock, Merrill Lynch, Continental Grain, and Usiskin and co-conspirators Cargill, Incorporated, E. F. Hutton & Company, Inc., Kohlmeyer & Co., Orvis Brothers & Co., Bache & Co., Inc., Hayden, Stone Incorporated, and H. Hentz & Co.

35. Pursuant to the By-Laws of the Association, clearing members are required to deposit certain original margin with the Association on futures contracts which have been cleared through the Association by the clearing member and the clearing member is also required to maintain, from day to day, the value of such futures contracts. Said daily maintenance of value involves the payment or receipt by the clearing member of the difference between the value of the outstanding contracts carried by him for customers at the prior day's settlement prices and the current day's settlement prices. In the event of price declines, clearing members having outstanding long or purchase positions with the Association must promptly forward sums to the Association which sums are distributed to clearing members having outstanding short or sale positions with the Association. In the event of increases in price, clearing members having outstanding short or sale positions must promptly forward sums to the Association which sums are distributed to clearing members having outstanding long or purchase positions with the Association. Payments required as a result of such fluctuations in market prices are known as "variation margin". While it is anticipated that the original and variation margin required of the clearing member will be recovered by the clearing member from the customers

for whom such contracts were cleared, each clearing member is in all events individually liable to the Association for such amounts on all futures contracts cleared by the clearing member through the Association. As hereinbefore alleged, if a clearing member defaults in the payment of margin to the Association, the By-Laws of the Association provide that other clearing members are individually liable to the Association for the amount of such default in accordance with a formula set forth in said By-Laws.

36. Included among the commodities for which futures contracts are purchased and sold on the Exchange is cottonseed oil.

37. At all times mentioned herein there were approximately 550 individual members of the Exchange. Individual members of the Exchange and the firms registered and represented in membership thereon (all hereinafter referred to as "members"), were, during the times mentioned herein, actively engaged in the purchase and sale on the Exchange, for themselves and for customers, of futures contracts for a variety of commodities including cottonseed oil. During the year 1963, the volume of trading in cottonseed oil futures contracts on the Exchange exceeded 125,000 contracts and had a total dollar value of approximately $750 million.

38. Pursuant to the Commodity Exchange Act (hereinafter referred to as the "Act"), futures contracts for certain commodities including cottonseed oil may only be bought and sold on an exchange which has been designated by the Secretary of Agriculture as a "contract market" and by or through a member thereof.

39. Defendant Exchange is and was at all times mentioned herein, a "contract market". In order to qualify for designation as a "contract market" the Exchange was required to show the Secretary of Agriculture that it complied with, and provide assurance to the Secretary of Agriculture that it would continue to comply with, certain conditions and requirements set forth in the Act including the regulation of activities on the Exchange and the prevention of certain types of activity on the Exchange.

40. The Act, and the By-Laws, Rules and Regulations of the Exchange and the Association adopted pursuant to the requirements of the Act, create duties and obligations on the part of the Exchange and the Association and their respective officers, managers, directors and agents, among other things: to comply and enforce compliance with the provisions of the Act, the Regulations of the Secretary of Agriculture promulgated thereunder, and the By-Laws, Rules and Regulations of the Exchange and the Association adopted pursuant thereto; to main-

tain an orderly market for cottonseed oil futures contracts on the Exchange under such conditions as fairly to reflect the general value of the commodity; to prevent sudden or unreasonable fluctuations in the prices of cottonseed oil futures contracts on the Exchange; to prevent undue and undesirable speculative activity in cottonseed oil futures contracts on the Exchange; to prevent the manipulation of prices of, and cornering of, cottonseed oil futures contracts on the Exchange; to insure fair practices and honest dealings in cottonseed oil futures contracts on the Exchange and in the Association; and to operate the Exchange and the Association in a just and equitable and fair and honest manner.

41. To carry out the said duties and obligations hereinbefore alleged in Paragraph 40, the Exchange and the Association and their respective officers, managers, directors and agents are vested with broad powers under By-Laws, Rules and Regulations adopted pursuant to the requirements of the Act. Among the powers so possessed are: the power to make, determine, fix, alter, vary and change the rules regulating purchases and sales of, and general trading in, any commodity futures dealt in on the floor of the Exchange; to require members to furnish information; to make investigations of all transactions in commodity futures; to summon witnesses for the purpose of examining and investigating the dealings, transactions, financial condition and general conduct of members; to subpoena and examine books and records; to call upon members for audited statements of their financial condition; to alter or abolish credits which may be given; to increase or decrease margin requirements in futures transactions; to fix the limit of daily permissible price fluctuations for futures contracts; to impose a limitation on the number of contracts which may be held by any person including members of the Exchange and the Association; to compel members of the Exchange and their customers to cease trading and accept a settlement of their contracts; to suspend or expel any member of the Exchange for engaging in conduct made unlawful by the Act or otherwise inconsistent with just and equitable principles of trade; and to deny representation on the Exchange to any non-member thereof engaging in conduct or proceedings inconsistent with just and equitable principles of trade.

42. Members of the Exchange and the Association and other persons utilizing the facilities maintained by the Exchange and the Association for effectuating transactions in futures contracts, including Haupt, were entitled to rely on the Exchange and the Association and their respective officers, managers, directors and agents to discharge the duties and obligations hereinbefore alleged in Paragraph 40.

V

VIOLATIONS ALLEGED AS AND FOR A FIRST CLAIM

43. Commencing some time prior to November 20, 1963, the exact date being unknown to plaintiff herein, and continuing to and including November 20, 1963, the defendants and co-conspirators failed to discharge the duties and obligations imposed upon them by the Act, and the By-Laws, Rules and Regulations of the Exchange and the Association adopted pursuant thereto, all in the manner hereinafter described.

44. Beginning in July 1963, and continuing to and including November 20, 1963, Haupt acted as a broker for transactions in cottonseed oil futures contracts on the Exchange of Allied Crude Vegetable Oil Refining Corporation (hereinafter referred to as "Allied"), and its affiliated persons and corporations, including Anthony DeAngelis (hereinafter referred to as "DeAngelis"). The futures contracts executed on the Exchange by Allied and its affiliated persons and corporations through Haupt were also cleared through the Association by Haupt and by virtue of such clearance Haupt became liable to the Association to maintain the value of the cottonseed oil futures contracts made by Allied and its affiliated persons and corporations, in the manner hereinbefore alleged in Paragraph 35.

45. During 1963, and particularly from the summer of 1963 until on or about November 14, 1963, Allied and its affiliated persons and corporations engaged in activities with respect to the purchase and sale of cottonseed oil futures contracts on the Exchange the tendency and effect of which was to artificially affect the prices of cottonseed oil futures contracts on the Exchange, to cause sudden or unreasonable fluctuations in the prices of such contracts, to constitute undue and undesirable speculative activity in such contracts, to constitute a manipulation of the prices of such contracts, to constitute a corner of such contracts and, in general, to create a disorderly market for such contracts under conditions as not to fairly reflect the general value of the commodity.

46. Among the activities so engaged in by Allied and its affiliated persons and corporations was the purchase, through Haupt and other brokers, of a greater number of cottonseed oil futures contracts than had ever before been held by one person at one time and the frequent consummation of ex-pit transactions (transactions not executed by public outcry at a pit or ring) involving large numbers of cottonseed oil futures contracts. In August 1963, the cottonseed oil futures contracts out-

standing in the name of Allied and its affiliated persons and corporations represented in excess of 50% of the total long position in such contracts outstanding on the Exchange. During the ensuing months the percentage of such contracts held by Allied and its affiliated persons and corporations increased to the point where on November 14, 1963, Allied's holdings of cottonseed oil futures contracts represented approximately 90% of the total long position in such contracts outstanding on the Exchange, of which approximately 80% were carried on the books of the Association in the name of Haupt.

47. From at least the summer of 1963 the defendants and the co-conspirators knew or should have known of the aforesaid activities of Allied and its affiliated persons and corporations and knew or should have known of the tendencies and effects of such activities, all of which the defendants and co-conspirators were required to prevent in order to discharge the duties and obligations imposed upon them by the Act and the By-Laws, Rules and Regulations of the Exchange and the Association adopted pursuant thereto, but failed to do so.

48. On or about November 14, 1963, the defendants and the co-conspirators knew or should have known that the holdings of Allied and its affiliated persons and corporations then represented approximately 90% of the total outstanding long position in such contracts on the Exchange and that substantially all of the cottonseed oil futures contracts purchased by Allied and its affiliated persons and corporations had been cleared through the Association by Haupt and were carried on the books of the Association in the name of Haupt at that time. From at least on or about November 14, 1963, the defendants and the co-conspirators knew or should have known that the tendency and effect of such concentrated ownership of cottonseed oil futures contracts would be to artificially affect prices for cottonseed oil futures contracts on the Exchange, to cause sudden or unreasonable fluctuations in the prices of such contracts, to cause substantial and continued declines in the prices for such contracts, to cause undue and undesirable speculative activity in such contracts, to create a manipulation of the prices of such contracts, and, in general, to create a disorderly market for such contracts under conditions as not to fairly reflect the general value of the commodity; all of which the defendants and the co-conspirators were required to prevent in order to discharge the duties and obligations imposed upon them by the Act and the By-Laws, Rules and Regulations of the Exchange and the Association adopted pursuant thereto, but failed to do so.

49. On or about November 17, 1963, the defendants and the co-conspirators knew or should have known that con-

tinued substantial declines in the prices of cottonseed oil futures contracts on the Exchange would occur and that Allied and its affiliated persons and corporations had exhausted their financial resources and could no longer maintain the value of the cottonseed oil futures contracts which were executed on the Exchange through Haupt and cleared through the Association by Haupt. From on or about November 17, 1963, the defendants and the co-conspirators knew or should have known that demands by the Association for increased original margin requirements and for variation margin resulting from declines in the prices of cottonseed oil futures contracts on the Exchange would have to be borne by Haupt without any prospect of reimbursement from Allied and its affiliated persons and corporations, thereby placing upon Haupt substantially all of the financial consequences attributable to the failure of the defendants and the co-conspirators to earlier discharge their duties and obligations, and that in view of the size of the position involved Haupt could not continue to maintain the value of such contracts, and that the tendency and effect of such inability would be to further artificially affect the prices of cottonseed oil futures contracts on the Exchange, to cause sudden and unreasonable fluctuations in the prices of such contracts, to cause undue and undesirable speculative activity in such contracts, to result in a disorderly market for such contracts under conditions as not to fairly reflect the general value of the commodity, all of which defendants and the co-conspirators were required to prevent in order to discharge the duties and obligations imposed upon them by the Act and the By-Laws, Rules and Regulations of the Exchange and the Association adopted pursuant thereto, but failed to do so.

50. As a result of the defendants' and the co-conspirators' said failure to discharge the aforesaid duties and obligations imposed upon them, all as hereinabove alleged, there occurred upon the Exchange, subsequent to November 14, 1963, all of those occurrences which the defendants and the co-conspirators knew or should have known had the tendency and effect to occur, all as hereinabove alleged, and in particular prices for cottonseed oil futures contracts on the Exchange declined substantially subsequent to November 14, 1963.

51. As a result of said decline in the prices of cottonseed oil futures contracts on the Exchange subsequent to November 14, 1963, Haupt was obligated to make margin payments to the Association approximating $12,000,000., a substantial part of which was distributed by the Association to members of the Exchange and the Association and the customers of such persons, firms or corporations including, but not limited to, defendants Merrill Lynch, Bunge and Continental Grain and certain of the company

co-conspirators, all of whom had profited by the said decline in the prices of cottonseed oil futures contracts on the Exchange.

52. Commencing on or about November 14, 1963, and continuing to and including November 20, 1963, the defendants and the co-conspirators misused information coming to them in their official capacities and abused the trust reposed in them as officers, directors, managers and agents of the Exchange and the Association in order to insure that they and certain other members and customers of members of the Exchange and the Association would profit on their transactions in cottonseed oil futures contracts on the Exchange and insure that certain members of the Association other than the brokers for Allied and its affiliated persons and corporations would not incur financial loss in conjunction therewith.

53. Commencing on or about November 14, 1963, and continuing to and including November 20, 1963, the individual defendants and co-conspirators misused information coming to them in their official capacities and abused the trust reposed in them as officers, directors, managers and agents of the Exchange and the Association by giving such information to, among others, the respective company defendant or company co-conspirator for which he acted as agent, representative and alter ego as hereinabove alleged, which company defendants and co-conspirators aided and abetted in the said misuse of information and abuse of trust by using the information given to them as aforesaid for their own individual profit, as the individual defendants and co-conspirators knew or should have known would be done.

54. On or about November 19, 1963, the defendants and the co-conspirators were advised that Allied had filed a voluntary petition in bankruptcy and that as a result of, among other things, the substantial price declines occurring in cottonseed oil futures contracts on the Exchange since November 14, 1963, Haupt could no longer meet calls from the Association for variation margin on the cottonseed oil futures contracts which were made on the Exchange by Allied and its affiliated persons and corporations through Haupt and which were cleared through the Association by Haupt. Thereafter, upon the recommendation of the Association, the Exchange voted to suspend trading in cottonseed oil futures contracts on the Exchange and ordered the liquidation of all such contracts at prices fixed by the Exchange. In so doing, the Exchange protected from financial loss, resulting from further declines in prices for cottonseed oil futures contracts on the Exchange, clearing members of the Association who would have been obligated by Association By-Laws to

bear the expense of such further losses on the cottonseed oil futures contracts cleared through the Association by Haupt, including but not limited to defendants Merrill Lynch, Continental Grain, Usiskin and certain of the companies named in Paragraph 29 hereof as co-conspirators.

55. By virtue of the bankruptcy of Allied and its affiliated persons and corporations the approximately $12,000,000. advanced to the Association by Haupt, never has been recovered by Haupt.

56. The artificial price level for cottonseed oil futures contracts on the Exchange, the manipulation of the prices of such contracts, the undue and undesirable speculative activity in such contracts, the sudden and unreasonable fluctuations in the prices of such contracts and the disorderly market for such contracts under conditions as not to fairly reflect the general value of the commodity, all as hereinbefore alleged and all of which caused injury and damage to Haupt as aforesaid, were the result of the defendants' and the co-conspirators' failure to discharge the duties and obligations imposed upon the defendants and the co-conspirators by the Act and the By-Laws, Rules and Regulations of the Exchange and the Association adopted pursuant thereto, in the following ways, among others:

A. Failing to prevent Allied and its affiliated persons and corporations from artificially affecting the prices of cottonseed oil futures contracts on the Exchange.

B. Failing to prevent the manipulation of prices of cottonseed oil futures contracts on the Exchange.

C. Failing to prevent sudden or unreasonable fluctuations in the prices of cottonseed oil futures contracts on the Exchange.

D. Failing to prevent substantial declines in the prices of cottonseed oil futures contracts on the Exchange.

E. Failing to maintain an orderly market in cottonseed oil futures contracts on the Exchange under conditions as fairly to reflect the general value of the commodity.

F. Failing to prevent undue and undesirable speculative activity in cottonseed oil futures contracts on the Exchange.

G. Failing to deny Allied and its affiliated persons and corporations representation on the Exchange for having manipulated the prices of cottonseed oil futures contracts on the Exchange and having otherwise engaged

in conduct inconsistent with just and equitable principles of trade.

H. Failing to limit the number of cottonseed oil futures contracts which could be held by traders on and members of the Exchange and the Association.

I. Failing to impose adequate margin requirements for traders on and members of the Exchange and the Association.

J. Failing to investigate the unusual market conditions resulting from the activities of Allied and its affiliated persons and corporations.

K. Failing to investigate whether the activities of Allied and its affiliated persons and corporations were in fact bona fide hedging transactions as claimed by Allied and its affiliated persons and corporations.

L. Adopting the principle of not interfering in other people's business when the facts patently disclosed irregularities which required investigation.

M. Failing to investigate the financial condition of Allied and its affiliated persons and corporations.

N. Failing to examine the books and records of members of the Exchange and the Association or to call for audited statements of their financial condition.

O. Failing to act upon the recommendations and advice of the Commodity Exchange Authority.

P. Failing to maintain an adequate staff organization including permanent investigators to supervise and investigate transactions and activities on the Exchange, and to ensure that all duties and obligations would be carried out properly.

Q. Failing to grant adequate authority to staff members to take the necessary steps when problems arose.

R. Failing to exercise its responsibility for self regulation by permitting and countenancing regulation by persons having a financial interest in the consequences of regulation rather than by disinterested persons.

S. Being concerned with the volume of trading on the Exchange rather than with the maintenance of an orderly market.

T. Permitting the market for cottonseed oil futures contracts on the Exchange to become characterized by undue concentration in the ownership of such contracts.

U. Failing to suspend trading when such suspension was clearly indicated in order to prevent manipulation,

disorderly marketing, undue and undesirable speculative activity, sudden and unreasonable price fluctuations, substantial price declines, and unjust and inequitable results.

V. Misusing information coming to them in their official capacities and abusing the trust reposed in them as officers, directors, managers and agents of the Exchange and the Association in order to insure that certain members and customers of members of the Exchange and the Association would profit on their transactions in cottonseed oil futures contracts on the Exchange, and to protect from financial loss in conjunction therewith certain members of the Association other than the brokers for Allied and its affiliated persons and corporations.

W. Permitting certain members of the Exchange and the Association to use for their own personal profit information given to them by certain defendants and co-conspirators in an abuse of the trust reposed in them as officers, directors, managers and agents of the Exchange and the Association.

X. Making critical decisions based not upon their said duties and obligations but rather upon the self interest of members and customers of members of the Exchange and the Association.

Y. Acting so as to place upon Haupt and other brokers for Allied and its affiliated persons and corporations the entire financial consequences of the failure to discharge said duties and obligations.

Z. Failing to take into account existing market conditions in determining the prices at which the futures contracts outstanding on the Exchange were to be liquidated.

57. By virtue of the aforementioned acts and failures to act the defendants and the co-conspirators failed to discharge the duties and obligations imposed upon them by the Act and the By-Laws, Rules and Regulations of the Exchange and the Association adopted pursuant thereto, and caused Haupt to suffer damages in an amount exceeding $12,000,000.

VI

Violations Alleged As And For A Second Claim

58. Plaintiff repeats and realleges each and every allegation of Paragraphs 1 to 57 above with the same force and effect as if set forth herein at length.

59. Beginning on or about the summer of 1963, and continuing until at least November 20, 1963, defendants and the co-conspirators herein have engaged in a combination and conspiracy in unreasonable restraint of inter-

state trade and commerce in cottonseed oil and cottonseed oil futures contracts in violation of Section 1 of the Sherman Act.

60. As part of said continuing combination and conspiracy defendants and the co-conspirators combined, conspired and agreed among themselves:

A. To abdicate responsibility for discharging the duties and obligations imposed upon them by the Act and the By-Laws, Rules and Regulations of the Exchange and the Association adopted pursuant thereto, by doing and failing to do those things set forth in subparagraphs A through Z inclusive of Paragraph 56, among others.

B. To prevent the prices of cottonseed oil futures contracts on the Exchange from reflecting the general value of the commodity.

C. To control and fix the prices of cottonseed oil futures contracts on the Exchange from and after November 14, 1963, by allowing prices subsequent to that date to decline to a predetermined level.

D. To permit certain members and customers of members of the Exchange and the Association to profit on their transactions in cottonseed oil futures contracts on the Exchange and to protect from financial loss in conjunction therewith certain members of the Association other than the brokers for Allied and its affiliated persons and corporations.

E. To place upon Haupt and the other brokers for Allied and its affiliated persons and corporations the financial losses resulting from the defendants' and co-conspirators' failure to discharge the duties and obligations imposed upon them by the Act and the By-Laws, Rules and Regulations of the Exchange and the Association adopted pursuant thereto.

61. By reason of said combination and conspiracy and the acts taken and not taken in furtherance thereof as more particularly alleged in Paragraphs 58, 59, and 60, the defendants' and the co-conspirators' regulation, restraint and control of transactions in cottonseed oil futures contracts on the Exchange was in unreasonable restraint of interstate trade and commerce in cottonseed oil and cottonseed oil futures contracts in violation of Section 1 of the Sherman Act, in that said acts and failures to act were not done in good faith but rather to further the selfish interests and personal gain of the defendants and the co-conspirators and in a fundamentally unfair manner.

62. By reason of the aforesaid combination and conspiracy in unreasonable restraint of interstate trade and commerce, Haupt's business and property was injured in an amount exceeding $12,000,000.

VII

VIOLATIONS ALLEGED AS AND FOR A THIRD CLAIM AGAINST DEFENDANT NEW YORK PRODUCE EXCHANGE AND NEW YORK PRODUCE EXCHANGE CLEARING ASSOCIATION

63. Plaintiff repeats and realleges each and every allegation of Paragraphs 1 through 57 and 59 through 62 above with the same force and effect as if set forth herein at length.

64. As a result of the foregoing, the transfer of $12,000,000. made or suffered by Haupt to the Association is fraudulent as against creditors of Haupt and null and void under applicable provisions of federal law.

65. As a result of the foregoing plaintiff is entitled to avoid said transfer and recover the sum of $12,000,000. from the Exchange and Association.

WHEREFORE, plaintiff demands judgment against defendants herein and each of them:

On the first claim, for $12,000,000. together with interest from November 14, 1963, and the costs and disbursements of this action;

On the second claim for $36,000,000. said amount representing threefold the damages sustained by Haupt, together with interest from November 14, 1963, and the costs and disbursements of this action including reasonable attorneys fees; and

On the third claim, for $12,000,000. together with interest from November 14, 1963, and the costs and disbursements of this action.

WEIL, GOTSHAL & MANGES,

By: Ira M. Millstein,
A Member of the Firm,
Attorneys for Plaintiff,
767 Fifth Avenue,
New York, New York 10022.

Demand for Jury Trial

PLEASE TAKE NOTICE that plaintiff demands trial by jury of all issues triable of right by a jury

Dated: New York, New York
November , 1969.

WEIL, GOTSHAL & MANGES

By: Ira M. Millstein,
A Member of the Firm,
Attorneys for Plaintiff,
767 Fifth Avenue,
New York, New York 10022.

Answer of Harry B. Anderson

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHARLES SELIGSON, as Trustee in Bankruptcy of IRA HAUPT & CO., a Limited Partnership, Bankrupt,	:	66 Civ. No. 1016
Plaintiff,	:	ANSWER
-against-	:	of
NEW YORK PRODUCE EXCHANGE, et al.,	:	HARRY B. ANDERSON
Defendants.	:	

Defendant Harry B. Anderson (hereinafter called "Anderson"), by his attorneys, Skutch & Burton, answers the complaint herein as follows:

1. Denies each and every allegation in paragraph 1 which is intended to refer to Anderson, and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1, except he admits that this action purports to be brought under the statutory provisions referred to in paragraph 1.

2. Admits that the matter in controversy purports to exceed the sum or value referred to in paragraph 2.

3. Admits that this Court's jurisdiction of this action purports to exist under the statutory provisions referred to in paragraph 3.

4. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4, except he admits that the defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated (hereinafter referred to as "Merrill Lynch") is found and transacts business in the Southern District of New York and further

avers that he is an inhabitant of the Eastern District of New York.

5. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5, except he admits, upon information and belief, that Ira Haupt & Co. was engaged in business as a commodity futures commission broker, formerly with an office and principal place of business at 111 Broadway, New York, New York, and that during 1963 it was registered with and represented in membership on the New York Produce Exchange and that during 1963, until December 4, 1963, it held the privilege of clearing contracts for the future delivery of cottonseed oil through the New York Produce Exchange Clearing Association.

6. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6.

7. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7.

8. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8, except he admits, upon information and belief, that the New York Produce Exchange (hereinafter referred to as the "Exchange") is a membership corporation organized and existing under the laws of New York, and maintains a room and facilities for the purchase and sale of cottonseed oil for future delivery, commonly known as cottonseed oil futures, at 2 Broadway, New York, New York.

9. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allega-

tions in paragraph 9, except he admits, upon information and belief, that the New York Produce Exchange Clearing Association (hereinafter referred to as the "Association"), is a stock corporation organized and existing under the laws of New York, and maintains facilities for the clearance of cottonseed oil futures purchased and sold on the Exchange, at 60 Beaver Street, New York, New York.

10. Denies each and every allegation in paragraph 10, and begs leave to refer to the exact provisions of the Charter and By-Laws of the Exchange.

11. Admits, upon information and belief, the allegations in paragraph 11.

12. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12, except he admits, upon information and belief, that Fahnestock & Co. is engaged in business as a commodity futures commission broker, in various states of the United States and in the City of New York, with its principal place of business at 65 Broadway, New York, New York.

13. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13.

14. Admits the allegations in paragraph 14.

15. Denies each and every allegation in paragraph 15, except he admits that Merrill Lynch is a corporation organized and existing under the laws of Delaware, and that it is engaged in business as a commodity futures commission broker in various states of the United States and in the City of New York, with its principal place of business at 70 Pine Street, New York, New York.

16. Denies each and every allegation in paragraph 16, except he admits that at the times mentioned he was a Vice President of Merrill Lynch and avers that as a member of the Exchange he, on December 1, 1958, applied to the Exchange for registration of Merrill Lynch with the Exchange, effective January 12, 1959, pursuant to Section 69 of the By-Laws of the Exchange, which application was accepted effective January 12, 1959, and Merrill Lynch became entitled to the privileges and subject to all the requirements and prohibitions set forth in said Section 69 of the By-Laws, and begs leave to refer to the exact provisions of such By-Laws.

17. Admits, upon information and belief, the allegations in paragraph 17.

18. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18, except he admits, upon information and belief, that Bunge Corporation is engaged in the business of buying and selling commodities in the City of New York and has a place of business at 1 Chase Manhattan Plaza, New York, New York.

19. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19, except he admits, upon information and belief, that at the times mentioned Walter C. Klein was President of Bunge Corporation.

20. Admits, upon information and belief, the allegations in paragraph 20.

21. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21, except he admits, upon information

and belief, that Continental Grain Company is engaged in the business of buying and selling commodities in the City of New York and has a place of business at 2 Broadway, New York, New York.

22. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22.

23. Admits, upon information and belief, the allegations in paragraph 23.

24. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24, except he admits, upon information and belief, that I. Usiskin & Co. is engaged in business as a commodity futures commission broker in the City of New York and has a place of business at 32 Broadway, New York, New York.

25. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25.

26. Admits, upon information and belief, the allegations in paragraph 26.

27. Admits, upon information and belief, the allegations in paragraph 27.

28. Admits, upon information and belief, the allegations in paragraph 28.

29. (a) Denies each and every allegation in paragraph 29. (a) which is intended to refer to Anderson and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29. (a), except he admits, upon information and belief, that at the times mentioned the named

individuals were serving as members on the Board of Managers of the Exchange and were associated with the respective companies named.

29. (b) Denies each and every allegation in paragraph 29. (b) which is intended to refer to Anderson and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29. (b).

30. Admits, upon information and belief, the allegations in paragraph 30.

31. Denies each and every allegation in paragraph 31 and begs leave to refer to the exact provisions of the Charter of the Exchange and the exact provisions of the Commodity Exchange Act.

32. Denies each and every allegation in paragraph 32, except he admits that contracts for future delivery made by members of the Exchange are subject to clearance through the Association and subject to its Charter, By-Laws and Rules, and in so far as such contracts are accepted for clearance the Association becomes substituted as a seller to the buyer and a buyer to the seller, and otherwise begs leave to refer to the exact provisions of the Charter, By-Laws and Rules of the Exchange and of the Association.

33. Denies each and every allegation in paragraph 33, except he admits that the privilege of clearing contracts for future delivery made on the Exchange may be granted or denied by the Board of Directors of the Association to members of the Exchange who are stockholders of the Association, partnerships who are stockholders of the Association having a partner who is a member of the Exchange, or corporations who are stockholders of the Association having an executive officer who is a member of the Exchange,

and otherwise begs leave to refer to the exact provisions of the By-Laws of the Association and the Rules of the Exchange.

34. Denies each and every allegation in paragraph 34, except he admits, upon information and belief, that the firms and companies named in paragraph 34 held the privilege of clearing contracts for the future delivery of cottonseed oil through the Association, and begs leave to refer to the exact provisions of the By-Laws of the Association.

35. Denies each and every allegation in paragraph 35, and begs leave to refer to the exact provisions of the By-Laws of the Association.

36. Denies the allegation in paragraph 36, except he admits that cottonseed oil is one of the commodities purchased and sold for future delivery on the Exchange.

37. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37, except he admits that Merrill Lynch during the times mentioned for the account and risk of customers entered into contracts on the Exchange to buy or sell cottonseed oil for future delivery, and denies that he entered into contracts for his own account.

38. Denies each and every allegation in paragraph 38, and otherwise begs leave to refer to the exact provisions of the Commodity Exchange Act.

39. Denies each and every allegation in paragraph 39, except he admits that the Exchange at all times mentioned was a "contract market" designated as such by the Secretary of Agriculture, and otherwise begs leave to refer

to the exact provisions of the Commodity Exchange Act.

40. Denies each and every allegation in paragraph 40, and begs leave to refer to the exact provisions of the Commodity Exchange Act, and the By-Laws, Rules and Regulations of the Exchange and of the Association.

41. Denies each and every allegation in paragraph 41, and begs leave to refer to the exact provisions of the By-Laws, Rules and Regulations of the Exchange and of the Association.

42. Denies each and every allegation in paragraph 42, and begs leave to refer to the exact provisions of the By-Laws, Rules and Regulations of the Exchange and of the Association.

43. Denies each and every allegation in paragraph 43 which is intended to refer to him or to Merrill Lynch, and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43.

44. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44.

45. Alleges he is without knowlege or information sufficient to form a belief as to the truth of the allegations in paragraph 45.

46. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46.

47. Denies each and every allegation in paragraph 47 which is intended to refer to him or to Merrill Lynch, and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the

allegations in paragraph 47.

48. Denies each and every allegation in paragraph 48 which is intended to refer to him or to Merrill Lynch, and otherwise alleges he is without knowlege or information sufficient to form a belief as to the truth of the allegations in paragraph 48.

49. Denies each and every allegation in paragraph 49 which is intended to refer to him or to Merrill Lynch, and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49.

50. Denies each and every allegation in paragraph 50 which is intended to refer to him or to Merrill Lynch, and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50.

51. Denies each and every allegation in paragraph 51 which is intended to refer to him or to Merrill Lynch, and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51.

52. Denies each and every allegation in paragraph 52 which is intended to refer to him or to Merrill Lynch, and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52.

53. Denies each and every allegation in paragraph 53 which is intended to refer to him or to Merrill Lynch, and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53.

54. Denies each and every allegation in paragraph 54 which is intended to refer to him or to Merrill Lynch, and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54.

55. Alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55.

56. Denies each and every allegation in paragraph 56 which is intended to refer to him or to Merrill Lynch, and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56.

57. Denies each and every allegation in paragraph 57 which is intended to refer to him or to Merrill Lynch, and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57.

58. Repeats and realleges as his answer to paragraph 58 each and every allegation of his answers to paragraphs 1 to 57 with the same force and effect as if such answers were set forth at length.

59. Denies each and every allegation in paragraph 59 which is intended to refer to him or to Merrill Lynch, and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59.

60. Denies each and every allegation in paragraph 60 which is intended to refer to him or to Merrill Lynch, and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60.

61. Denies each and every allegation in paragraph 61 which is intended to refer to him or to Merrill Lynch, and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61.

62. Denies each and every allegation in paragraph 62 which is intended to refer to him or to Merrill Lynch, and otherwise alleges he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 62.

Anderson sets forth his further defenses to the complaint herein as follows:

First Defense

The complaint fails to state a claim against Anderson upon which relief can be granted.

Second Defense

Ira Haupt & Co. initiated and participated in the activities and matters complained of and have so enjoyed the benefits thereof and have themselves so violated the Commodity Exchange Act, the anti-trust laws, other applicable statutes and law as to be disentitled from maintaining any of the alleged rights of action set forth in the complaint.

Third Defense

Ira Haupt & Co. are barred and prevented by law from maintaining any of the alleged rights of action set forth in the complaint by reason of the fact that the activities complained of, which Ira Haupt & Co. initiated and in which they participated, constitute criminal and illegal acts under the Commodity Exchange Act, the anti-trust laws, other applicable statutes and law.

Fourth Defense

Ira Haupt & Co. are barred and prevented by law from maintaining any of the alleged rights of action set forth in the complaint by reason of the fact that the controversy described in the complaint is one within the administrative jurisdiction of the Secretary of Agriculture and/or the Commodity Exchange Commission, created and acting pursuant to the provisions of the Commodity Exchange Act, 7 U.S.C. §§1-17(a) (1958), and said Secretary and/or said Commission have the statutory obligation to determine the questions involved in this action in so far as they relate to matters within the scope of the regulatory powers of said Secretary and/or said Commission, and Ira Haupt & Co. are obliged to seek redress therefor before said Secretary and/or said Commission.

Fifth Defense

Ira Haupt & Co. are barred and prevented from maintaining any of the alleged rights of action set forth in the complaint by reason of the fact that they were registered with and represented in membership on the New York Produce Exchange and were a clearing member of the New York Produce Exchange Clearing Association, and, as such, were bound by the provisions of the Charter, By-Laws, Rules and Regulations of said Exchange and said Association and they consented to all action in accordance therewith and all action of the defendants was in accordance therewith.

Sixth Defense

The participation of Anderson and the other defendants in the activities complained of was authorized and mandated by, and such defendants were acting under the authority of, the provisions of the Commodity Exchange Act, 7 U.S.C. §§1-17 (a) (1958), and such activities cannot and

... constitute a violation of said Act or of ... laws.

Seventh Defense

Ira Haupt & Co. voluntarily adopted a dangerous, hazardous, negligent and reckless method or manner of performing and financing the tasks which they were undertaking on behalf of Allied Crude Vegetable Oil Refining Corporation and its affiliated persons and corporations, including Anthony De Angelis, and of which they now complain, and they thereby assumed the risk of injury in so performing and undertaking.

Eighth Defense

Ira Haupt & Co. are barred and prevented by law from maintaining any of the alleged rights of action set forth in the complaint by reason of the fact that, upon information and belief, claims and suits on behalf of Ira Haupt & Co. have been filed and prosecuted seeking recovery of sums representing the same losses of which complaint is made against defendants in this action, and by reason of plaintiff's election to continue the prosecution of said claims and suits.

Ninth Defense

Ira Haupt & Co. are estopped and prevented by law from maintaining any of the alleged rights of action set forth in the complaint, have waived any right to enforce the same and have released the defendants from any liability therefor, by reason of the fact that, with full knowledge of all the facts in any way connected with or relating to the activities and matters complained of, and being represented by legal counsel, Ira Haupt & Co. duly ratified and confirmed the same in all respects by agreeing to the suspen-

sion of trading on the Exchange in cottonseed oil for future delivery and the liquidation of contracts carried by them at prices so fixed by the Exchange, and accepting on November 21, 1933 and retaining thereafter in full satisfaction thereof the net proceeds from the liquidation thereof, including the return to them of a sum in excess of Three Million Dollars ($3,000,000), representing margins deposited by Ira Haupt & Co. with the Association.

Tenth Defense

Ira Haupt & Co. are barred and prevented by law from maintaining any of the alleged rights of action set forth in the complaint by reason of the fact that the dangerous, hazardous, negligent and reckless method or manner of performing and financing the tasks which Ira Haupt & Co. were undertaking on behalf of Allied Crude Vegetable Oil Refining Corporation and its affiliated persons and corporations, including Anthony De Angelis, brought about an emergency situation threatening a panic in the market for vegetable oils and the standing and stability of both the Exchange and the Association, and the defendants were privileged in the circumstances to take the actions of which complaint is made to remedy the emergency situation so brought about by such course of dealing on the part of Ira Haupt & Co.

Eleventh Defense

Ira Haupt & Co. are barred and prevented from maintaining any of the alleged rights of action set forth in the complaint against the defendant Anderson by reason of the fact that the By-Laws of the New York Produce Exchange provide that no one on the Board of Managers shall be liable for any damages sustained by a member or his firm growing out of the use or enjoyment by such member or firm of the

facilities afforded by the Exchange to members for the conduct of their business.

Anderson sets forth his further separate defense to the second claim of the complaint herein, as follows:

Separate Defense to Second Claim

Plaintiff has no standing to maintain the alleged right of action under the anti-trust laws set forth in the second claim by reason of the fact that Ira Haupt & Co. were only creditors of Allied Crude Vegetable Oil Refining Corporation and its affiliated persons and corporations, including Anthony De Angelis, in respect of the activities complained of.

WHEREFORE, defendant Anderson demands judgment in his favor against the plaintiff dismissing the complaint herein and for the costs and disbursements of this action.

Dated: New York, New York
September 20, 1966

SKUTCH & BURTON

By Harold Edwards Burton
A Member of the Firm

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Donald V. MacDonald
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Dewey, Ballantine, Bushby, Palmer & Wood
Attorneys for Walter C. Klein
and Bunge Corporation
40 Wall Street
New York, N. Y.

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Attorneys for Merrill Lynch, Pierce, Fenner & Smith
Incorporated
70 Pine Street
New York, N. Y.

Answer and Counterclaim of Bunge Corp. and Walter C. Klein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

CHARLES SELIGSON, as Trustee in Bankruptcy of IRA HAUPT & CO., a Limited Partnership, Bankrupt, :

Plaintiff, : 66 Civ. No. 1016

- against - :

NEW YORK PRODUCE EXCHANGE, et al., : ANSWER

Defendants. :

- -x

Defendants Bunge Corporation ("Bunge") and Walter C. Klein ("Klein") by their attorneys, Dewey, Ballantine, Bushby, Palmer & Wood, for their answer to the complaint herein, respectfully:

1. Deny the allegations of paragraph 1 of the complaint that they violated the Commodity Exchange Act, the Clayton Act or the Sherman Act. They deny knowledge or information sufficient to form a belief as to whether any of the other defendants violated said Acts.

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 5, 13, 16, 22 and 25, except that they admit that Ira Haupt & Co. ("Haupt"), Fahnestock & Co., Merrill Lynch, Pierce, Fenner & Smith, Inc., Continental Grain Co., and I.Usiskin & Co. were represented in membership on the New York Produce Exchange ("Exchange").

3. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraphs 7, 12, 24, 27, 28, 34, 35, 37, 44, 45, 46 and 55.

4. Deny each and every allegation of paragraph 19, except that they admit that Klein was the President and a director of Bunge and that Bunge was represented in

membership on the Exchange.

5. Deny that they participated in any act or failure to act or took part in any combination and conspiracy as alleged in paragraph 29(a). They deny knowledge or information sufficient to form a belief as to the activities or knowledge of the other defendants or so-called co-conspirators, except that they admit that the persons listed in paragraph 29(a) were members of the Board of Managers of the Exchange and were affiliated in one capacity or another with the companies listed against their respective names.

6. Deny that they participated in any act or failure to act or took part in any combination and conspiracy as alleged in paragraph 29(b). They deny knowledge or information sufficient to form a belief as to the truth of any of the remaining allegations listed in paragraph 29(b).

7. Deny each and every allegation of paragraphs 31, 40, 41 and 42 and refer to the Commodity Exchange Act, and the Charter, By-Laws, Rules and Regulations of the Exchange and the New York Produce Exchange Clearing Association ("Association") for the terms thereof.

8. Deny each and every allegation of paragraphs 32 and 33 and refer to the Charter, By-Laws, Rules and Regulations of the Exchange and the Association for the terms thereof.

9. Deny each and every allegation of paragraphs 43, 47, 48, 49, 50, 52, 53, 56, 57, 59, 60, 61 and 62, except that they deny knowledge or information sufficient to form a belief as to the activities or knowledge of the other defendants in relation to the allegations contained in said paragraphs.

10. Deny each and every allegation of paragraph 51 except that they deny knowledge or information sufficient to form a belief as to the allegations of said paragraph as they relate to the actions of Haupt or the other defendants.

11. Deny each and every allegation of paragraph 54, except that Bunge admits that it knew on November 19, 1963 that Allied had filed a petition in bankruptcy and that the Exchange had voted to suspend trading and liquidate all cottonseed oil futures contracts at a fixed price. They deny knowledge or information sufficient to form a belief as to the activities or knowledge of the other defendants or of Haupt with respect to the allegations of paragraph 54.

12. With respect to paragraph 58, repeat and reallege their answers to paragraphs 1 to 57.

FOR AN AFFIRMATIVE DEFENSE TO BOTH CAUSES OF ACTION ON BEHALF OF DEFENDANTS BUNGE AND KLEIN

13. On information and belief, prior to and during the period November 15 to 19, 1963, Haupt held at least 7,600 contracts for the future delivery of cottonseed oil for the account of Allied Crude Vegetable Oil Refining Corp. ("Allied"). Haupt participated in the accumulation of this position and actively aided and abetted Allied in accumulating such position by loaning large sums of money to Allied to maintain the margin necessary to support such position. Haupt knew or should have known that such a position constituted excessive speculation in and a manipulation of the market in contracts for future delivery of cottonseed oil on the Exchange, and knew or should have known of the tendency and effect that such a position would have on the cottonseed oil futures market. Haupt took

no steps either to correct this situation or to inform defendants of the size of the position it held until after it found itself unable to meet the financial obligations it deliberately assumed in amassing such position.

14. Haupt's conduct violated its duties as a member of the Exchange and its duties under the Commodity Exchange Act. By reason of such conduct, plaintiff is not entitled to recover any damages from defendants herein.

FOR A COUNTERCLAIM ON BEHALF OF DEFENDANT BUNGE

15. Bunge repeats and realleges paragraphs 13 and 14 hereof.

16. On information and belief, in addition to its position in cottonseed oil on the Exchange, Haupt held for the account of Allied more than 6,000 contracts for the future delivery of soybean oil on the Chicago Board of Trade.

17. Haupt knew or should have known that prices on the Exchange and the Chicago Board of Trade are related, so that a change in price on one market will cause a similar change on the other.

18. On November 18, 1963, Bunge, as broker for the account of Allied, held 2,500 contracts for the future delivery of soybean oil on the Chicago Board of Trade and 1,000 contracts for the future delivery of cottonseed oil on the Exchange.

19. By reason of the large position held by Haupt in both soybean oil and cottonseed oil and by reason of the manipulation of the market by Haupt, the market price of both soybean oil and cottonseed oil suffered a

severe decline between November 15 and November 20, 1963.

20. By reason of the decline in price and the bankruptcy of Allied, Bunge suffered a loss in the amount of $3,616,882.00 on account of the 3,500 contracts it held as broker for Allied, no part of which has been repaid.

WHEREFORE, Bunge demands judgment against Haupt in the amount of $3,616,882.00 and interest and for the costs and disbursements of this action, and Bunge and Klein demand judgment dismissing the complaint against Bunge and Klein and for the costs and disbursements of this action, and for such other and further relief as the court may deem just and proper.

Dated: New York, New York
September 27, 1966

DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD

By /s/ Philip C. Scott
A member of the firm
Attorneys for defendants Bunge Corporation and Walter C. Klein
Office and Post Office Address:
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DIgby 4-8000

Answer of Continental Grain Co. and Harold H. Vogel

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- x

CHARLES SELIGSON, as Trustee in Bankruptcy of Ira Haupt & Co., a Limited Partnership, Bankrupt,

Plaintiff,

-against-

NEW YORK PRODUCE EXCHANGE; NEW YORK PRODUCE EXCHANGE CLEARING ASSOCIATION; DONALD V. MacDONALD: FAHNESTOCK & CO.; HARRY B. ANDERSON; MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED; WALTER C. KLEIN; BUNGE CORPORATION; HAROLD H. VOGEL; CONTINENTAL GRAIN COMPANY; SIDNEY FASHENA; I. USISKIN & CO.; CARL R. BERG; SOLOMON J. WEINSTEIN and DAVID L. BOYER.

Defendants.

- x

66 Civ. No.1016

ANSWER

The defendants, Continental Grain Company ("Continental") and Harold H. Vogel ("Vogel"), by their attorneys, Paul, Weiss, Rifkind, Wharton & Garrison, for their answer to the complaint:

1. Deny the allegations of paragraph 1 of the complaint insofar as they refer to Continental or Vogel and otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1, except admit that the plaintiff purports to bring the action under the statutory provisions referred to in paragraph 1.

2. Lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the complaint, except admit that Vogel may be found in the Southern District of New York and Continental transacts business there.

3. Lack knowledge or information sufficient to

form a belief as to the truth of the allegations of paragraphs 5, 13, 16, 19, and 25 of the complaint except admit that Ira Haupt & Co., ("Haupt"), Fahnestock & Co., Merrill Lynch, Pierce, Fenner & Smith, Inc., Bunge Corporation, and I. Usiskin & Co. at the times mentioned in the complaint were represented in membership on the New York Produce Exchange ("Exchange") and that Haupt was a clearing member of the New York Produce Exchange Clearing Association ("Association").

4. Lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 6, 7, 12, 15, 18, 24, 37, 44, 45, 46, and 55 of the complaint.

5. Deny the allegations of paragraphs 10, 31, 32, 33, 34, 35, 38, 39, 40, 41, and 42 of the complaint and respectfully refer this Court to the Charter, By-laws, and Rules of the Exchange, the Charter, By-laws and Rules of the Association and the Commodities Exchange Act and the regulations promulgated thereunder, except admit that Fahnestock & Co., Merrill Lynch, Pierce, Fenner & Smith, Inc., Continental, I. Usiskin & Co., Cargill Inc., E.F. Hutton & Company, Inc., Kohlmeyer & Co., Orvis Bros. & Co., Bache & Co., Hayden, Stone Inc. and H. Hentz & Co. are among the clearing members of the Association and that the Exchange is and was at the times mentioned in the complaint a "contract market."

6. Deny the allegations of paragraph 22 in the complaint except admit that Vogel was at the times mentioned in the complaint and now is Executive Vice-President of Continental and that Continental was at the times mentioned in the complaint and now is, represented in membership on the Exchange.

7. Deny the allegations of paragraphs 29, 43, 47, 48, 49, 50, 51, 52, 53, 56, 57, 59, 60, 61 and 62 of the complaint insofar as they refer to Continental or Vogel and otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations of those paragraphs.

8. Deny the allegations of paragraph 54 of the complaint insofar as they refer to Continental or Vogel and otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations of that paragraph, except admit that they were advised on November 19, 1963 that Allied Crude Vegetable Oil Refining Corporation ("Allied") had filed a voluntary petition in bankruptcy and that thereafter the Exchange suspended trading in cottonseed oil futures contracts on the Exchange and ordered the liquidation of all such contracts at prices fixed by the Exchange.

9. With respect to the allegations of paragraph 58 of the complaint, repeat and reallege the responses above made.

FIRST AFFIRMATIVE DEFENSE

10. Defendant Vogel does not and did not participate in trading by Continental in cottonseed oil futures contracts on the Exchange, and did not supervise those engaged in such trading. In all his acts as a member of the Board of Managers of the Exchange, including his participation in the decision to suspend trading and to order liquidation of cottonseed oil futures contracts at prices fixed by the Exchange, Vogel acted in the exercise of his best judgment as a member of the Board of Managers, without direction or advice from Continental, its officers, agents or employees, and without regard for the interest of Continental.

SECOND AFFIRMATIVE DEFENSE

11. If Allied engaged in the activities alleged in the complaint having the tendency and effect therein alleged: (i) Haupt acted as Allied's broker, agent, financier and instrumentality in these activities either with knowledge, or reckless disregard, of their tendency and effect; (ii) Haupt concealed such activities from defendants Vogel and Continental; and (iii) in so doing, Haupt violated its duties, including its duties as a broker registered with and represented in membership on the Exchange.

THIRD AFFIRMATIVE DEFENSE

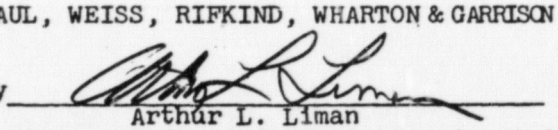
12. Defendants reallege the allegations of paragraph 11 of this answer.

13. In so acting Haupt assumed the risk of the consequences thereof.

WHEREFORE, defendants Continental and Vogel demand judgment dismissing the complaint and for the costs and disbursements of this action.

Dated: New York, N.Y.
September 27, 1966.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By 
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Amended Answer of Sidney Fashena

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SELIGSON, as Trustee in Bankruptcy of IRA HAUPT & CO., a Limited Partnership, Bankrupt, Plaintiff, against-	66 Civ. No. 1016
NEW YORK PRODUCE EXCHANGE; NEW YORK PRODUCE EXCHANGE CLEARING ASSOCIATION; DONALD V. MacDONALD; FAHNESTOCK & CO.; HARRY B. ANDERSON; MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED; WALTER C. KLEIN; BUNGE CORPORATION; HAROLD H. VOGEL; CONTINENTAL GRAIN COMPANY; SIDNEY FASHENA; I. USISKIN & CO.; CARL A. BERG; SOLOMON J. WEINSTEIN and DAVID L. BOYER, Defendants.	AMENDED ANSWER

AMENDED ANSWER OF DEFENDANT SIDNEY FASHENA

Defendant SIDNEY FASHENA, by Holtzmann, Wise & Shepard, his attorney, for his amended answer to the amended complaint herein:

AS TO THE FIRST CAUSE OF ACTION:

1. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "1".

2. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "2".

3. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "3".

4. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "4", except admits that defendant I. Usickin & Co. transacts business in the Southern District of New York.

5. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "5" except admits that Ira Haupt & Co. (hereinafter referred to as "Haupt") held itself out to be a limited partnership formed under the laws of the State of New York; that during 1963 and for many years prior thereto, Haupt was registered as a member of the New York Produce Exchange (the "Exchange") under and pursuant to the provisions of its bylaws, rules and regulations; was a clearing member of the New York Produce Exchange Clearing Association and was engaged in the commodities brokerage and commission business, with an office and principal place of business at No. 111 Broadway, New York, New York.

6. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "6".

7. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "7".

8. Denies each and all of the allegations contained in paragraph numbered "8" except admits that defendant Exchange is a non-stock, non-profit membership corporation created by special act of the New York State Legislature in

1862, being Chapter 359 of the Laws of 1862, as amended, that it is designated by the United States Secretary of Agriculture as a Contract Market on which persons dealing through members of the Exchange, registered with the Secretary of Agriculture, may buy and sell at open outcry across the ring on the floor of the Exchange, cottonseed oil, cottonseed meal, soybean oil and tallow for future delivery, commonly referred to as buying and selling futures contracts, and that the Exchange provides and regulates a suitable floor and facilities for that purpose at No. 2-8 Broadway, in the Borough of Manhattan, New York City.

9. Denies each and all of the allegations contained in paragraph numbered "9" except admits that defendant, New York Produce Exchange Clearing Association, is a stock corporation organized and existing under the laws of the State of New York, and that it maintains, at 60 Beaver Street, New York, New York, facilities for the clearance of commodity futures contracts purchased and sold on defendant Exchange.

10. Denies each and all of the allegations contained in paragraph numbered "10" except admits that pursuant to the organic law and bylaws of the Exchange only individuals may be elected to membership, that for a partnership to enjoy the privileges of membership it must be registered with the Exchange as a member by a general partner of the partnership who must also be an individual member of the Exchange and that for a corporation to enjoy the privileges of membership it must be registered with the Exchange as a member by an officer or bona fide employee who must

also be an individual member of the Exchange and except admits that management of the Exchange is vested in a Board of Managers consisting of the President, Vice-President, Treasurer and twelve Managers who must be individual members of the Exchange and fairly apportioned from among the various branches of trade interests represented in the Exchange.

11. Admits defendant, Donald V. MacDonald, was a member of the Exchange and was for some time the President and a member of the Board of Managers of the Exchange duly elected by vote of the members and was also ex-officio chairman of the Executive Committee but, except as herein expressly admitted, denies each and all of the allegations contained in paragraph numbered "11" and denies that any combination, conspiracy or agreement ever existed or was involved.

12. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "12".

13. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "13" except admits that Fahnestock is registered as a partnership with the Exchange for membership privileges pursuant to the by-laws of the Exchange.

14. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "14" except admits that defendant, Harry B. Anderson, was a member of the Exchange, was a

member of its Board of Managers duly elected by the membership and that he was also a member of the Executive Committee and of the business conduct, cottonseed products and soybean oil committees of the Exchange and except that he denies any combination, conspiracy or agreement ever existed or was involved.

15. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "15".

16. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "16" except admits that Merrill Lynch is registered as a corporation with the Exchange for membership privileges, pursuant to the by-laws of the Exchange except denies that any combination, conspiracy or agreement ever existed or was involved.

17. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "17" except admits that defendant, Walter C. Klein was a member of the Exchange and was for some time an elected member of the Board of Managers and was also for some time a member of the Executive Committee of the Exchange and except that he denies that any combination, conspiracy or agreement ever existed or was involved.

18. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "18".

19. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "19" except admits that Bunge is registered as a corporation with the Exchange for membership privileges, pursuant to the by-laws of the Exchange and except that he denies that any combination, conspiracy or agreement ever existed or was involved.

20. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "20" except admits defendant, Harold H. Vogel, was a member of the Exchange and was for some time the Vice-President and member of the Board of Managers duly elected by the membership and a member of the Executive Committee of the Exchange, and except that he denies that any combination, conspiracy or agreement ever existed or was involved.

21. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "21".

22. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "22" except admits that Continental is registered as a corporation with the Exchange for membership privileges, pursuant to the by-laws of the Exchange and except that he denies that any combination, conspiracy or agreement ever existed or was involved.

23. Admits that he was a member of the Exchange and was for some time its Treasurer and a member of the Board of Managers of the Exchange duly elected by vote of the membership and also was a member of the Executive Committee of the Exchange but except as herein expressly admitted, denies each and all of the allegations contained in paragraph numbered "23" and denies that any combination, conspiracy or agreement ever existed or was involved.

24. Denies each and all of the allegations contained in paragraph numbered "24" except admits that I. Usiskin & Co. is a New York partnership and that it is engaged in the commodities, brokerage and commission business in the City of New York, with its principal place of business at No. 32 Broadway, New York, New York,

25. Denies each and all of the allegations contained in paragraph numbered "25" except admits that he is a general partner of I.Usiskin & Co. which is a partnership registered with the Exchange for membership privileges, pursuant to the by-laws of the Exchange.

26. Admits the allegations contained in paragraph numbered "26".

27. Admits the allegations contained in paragraph numbered "27".

28. Admits the allegations contained in paragraph numbered "28".

29. (a) Denies each and all of the allegations contained in subparagraph "(a)" of paragraph numbered "29"

(b) Denies each and all of the allegations contained in subparagraph "(b)" of paragraph numbered "29".

30. Admits the allegations contained in paragraph numbered "30".

31. Denies each and all of the allegations contained in paragraph numbered "31" and avers that all purchases, sales and transfers of such commodity futures contracts are subject to the provisions of the Commodity Exchange Act and the regulations promulgated thereunder by the United States Secretary of Agriculture and to all of the by-laws, rules and regulations of the Exchange not disapproved by the United States Secretary of Agriculture.

32. Denies each and all of the allegations contained in paragraph numbered "32" except admits that contracts for future delivery made on the Exchange are subject to clearance through the Association in accordance with the charter, by-laws, rules, regulations and resolutions of the said association and, if accepted by the Association for clearance, the Association thereupon becomes substitited as a seller to the buyer and as a buyer from the seller. For certainty as to clearance operation defendant begs leave to refer to the charter, by-laws, rules and regulations of the Association.

33. Denies each and all of the allegations contained in paragraph numbered "33" except admits that the privilege

of clearing contracts for future delivery made on the Exchange may be granted or denied by the board of directors of the Association to members of the Exchange who are stockholders of the Association, partnerships who are stockholders of the Association having a partner who is a member of the Exchange, or corporations who are stockholders of the Association having an executive officer who is a member of the Exchange.

34. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "34" except admits that I. Usiskin & Co. is a member of the Clearing Association.

35. Denies each and all of the allegations contained in paragraph numbered "35".

36. Denies each and all of the allegations contained in paragraph numbered "36" except admits that cottonseed oil for future delivery may be purchased and sold at open outcry across the ring on the floor of the Exchange.

37. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "37".

38. Admits the allegations contained in paragraph numbered "38".

39. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "39" except admits that the

Exchange is a contract market designated by the Secretary of Agriculture under and pursuant to the provisions of the Commodity Exchange Act and regulations thereunder.

40. Denies each and all of the allegations contained in paragraph numbered "40".

41. Denies each and all of the allegations contained in paragraph numbered "41".

42. Denies each and all of the allegations contained in paragraph numbered "42".

43. Denies each and all of the allegations contained in paragraph numbered "43".

44. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "44" except admits that Haupt, as a member of the Exchange and as a broker and commission merchant registered with the Secretary of Agriculture under and pursuant to the provisions of the Commodity Exchange Act, was privileged to buy and sell futures contracts in cottonseed oil on the floor of the Exchange, and as a member of the Clearing Association was privileged to clear such contracts through the Association in accordance with its charter, by-laws, rules, regulations and resolutions and that Haupt exercised such privileges.

45. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "45".

46. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "46".

47. Denies each and all of the allegations contained in paragraph numbered "47".

48. Denies each and all of the allegations contained in paragraph numbered "48".

49. Denies each and all of the allegations contained in paragraph numbered "49".

50. Denies each and all of the allegations contained in paragraph numbered "50".

51. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "51".

52. Denies each and all of the allegations contained in paragraph numbered "52".

53. Denies each and all of the allegations contained in paragraph numbered "53".

54. Denies each and all of the allegations contained in paragraph numbered "54".

55. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "55".

56. Denies each and all of the allegations contained in paragraph numbered "56".

57. Denies each and all of the allegations contained in paragraph numbered "57".

AS TO THE SECOND CAUSE OF ACTION:

58. Repeats the contents of paragraphs 1 to 57 hereof, both inclusive, with the same force and effect as though here set forth in full and at length.

59. Denies each and all of the allegations contained in paragraph "59".

60. Denies each and all of the allegations contained in paragraph numbered "60".

61. Denies each and all of the allegations contained in paragraph numbered "61".

62. Denies each and all of the allegations contained in paragraph numbered "62".

AS TO THE THIRD CAUSE OF ACTION:

63. Repeats the contents of paragraphs "1" to "62", both inclusive, hereof with the same force and effect as though here set forth in full and at length.

64. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs numbered "64" and "65".

FOR A FIRST DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

65. Upon information and belief plaintiff's amended complaint fails to state a claim against this defendant upon which relief can be granted.

FOR A FIRST DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION, ALLEGES:

66. Upon information and belief this Court is without jurisdiction over the subject matter of the first and second causes of action in that diversity of citisenship is lacking as to each such cause of action, in that neither cause of action involves a dispute or controversy respecting

the validity, construction or effect of the laws of the United States upon a determination of which the result depends, and in that each cause of action is not separate and distinct from the other cause of action.

FOR A SECOND DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION, ALLEGES:

67. Upon information and belief neither the Commodity Exchange Act nor any Act of Congress contain any provisions, express or implied, for a civil remedy by suit for damages in the United States District Court by a member of a contract market, floor broker or futures commission merchant against any other member, floor broker or futures commission merchant for violation of the Commodity Exchange Act and accordingly this Court is without jurisdiction to entertain this action and the same should be dismissed.

FOR A SECOND DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

68. Upon information and belief, Haupt voluntarily made the purchases, sales and transactions in cottonseed oil futures contracts, referred to in the amended complaint, at open outcry across the ring on the floor of the Exchange, and voluntarily entered into agreement with the Clearing Association for the clearance of said contracts and transactions, as agent for Allied and affiliates, with full knowledge of the conditions of supply and demand in the cottonseed oil market and the probability of fluctuations of prices therein and well knowing that all such transactions in cottonseed oil futures contracts were made subject to the Commodity Exchange Act and Regulations and to the Charter, bylaws, rules, regulations and resolutions of defendant Exchange, including the

provisions respecting liabilities assumed, contingent or otherwise, by which Haupt and its customers were bound, and all losses, if any, in connection with the said purchases and sales, and the performance of said contracts were risks which Haupt as a member of defendant Exchange and clearing member of the Clearing Association with full knowledge, voluntarily assumed in making the said transactions and this defendant is not liable for any losses by Haupt in respect thereto.

FOR A THIRD DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

69. Upon information and belief Haupt's alleged losses and damages complained of, if any sustained, were not caused by any omissions, wrongful, negligent or unlawful acts on the part of this defendant but on the contrary, were occasioned solely by the negligent, wilful, wrongful, reckless, wanton and illegal acts and conduct and failures to act of Haupt, its agents and servants.

FOR A THIRD DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION, ALLEGES:

70. Upon information and belief, all of the transactions in cottonseed oil futures contracts made by Haupt as alleged in the amended complaint were made voluntarily and competitively at open outcry across the ring on the floor of the Exchange and said contracts were voluntarily cleared and settled by Haupt through the Clearing Association pursuant to and in accordance with its bylaws, rules, regulations and resolutions, from all of which transactions Haupt derived large commissions and profits and accordingly Haupt was and plaintiff is barred from maintaining the first and second causes of action.

FOR A FOURTH DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

71. Upon information and belief the injuries and losses to Haupt of which the plaintiff complains in its amended complaint were caused by the wanton, reckless and illegal conduct of Haupt and had Haupt not engaged in such misconduct it would not have suffered the losses of which the plaintiff now complains.

FOR A FIFTH DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

72. Upon information and belief after the acts, complained of by plaintiff in his amended complaint, which are alleged to have damaged Haupt and with full knowledge of all the facts in any way connected with or relating to the activities and matters complained of, and being represented by legal counsel, Haupt waived any objections thereto and duly ratified and confirmed the same in all respects by agreeing to the suspension of trading in cottonseed oil futures contracts on the Exchange and the settlement of all obligations under outstanding cottonseed oil futures contracts at values determined by the Board of Managers of the Exchange to be fair, reasonable and equitable to all parties to the said contracts and on November 21, 1963 defendants settled with Haupt any and all claims for damages which Haupt might have, and Haupt accepted from the Clearing Association and thereafter retained and plaintiff still retains the sum of $3,128,500.00 being the net proceeds to Haupt of the settlement, and the Clearing Association delivered to plaintiff and the plaintiff still retains the shares of capital stock of the Association owned by Haupt but held by the Association

as security for the payment of Haupt's obligations to the Association, all in full settlement, satisfaction, release and discharge of defendant from any and all claims and liability including the claims alleged in the complaint.

FOR A SIXTH DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

73. Upon information and belief numerous claims and suits by plaintiff and others on behalf of Haupt have been filed and presented seeking recovery of sums representing the same claimed losses stated in the amended complaint in this action, that large recoveries have been had and releases given by reason of which this defendant has been released and discharged from any liability to the plaintiff and plaintiff is barred and prevented from maintaining this action accordingly.

WHEREFORE, this defendant demands judgment dismissing the amended complaint herein together with the costs and disbursements in this action.

Dated: New York, New York
January 15, 1970

HOLTZMANN, WISE & SHEPARD

By _____
A Member of the Firm
Attorneys for Defendant
Sidney Fashena
Office and Post Office Address
30 Broad Street
New York, New York 10004
Telephone No. 422-7740

Amended Answer of Donald V. MacDonald

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CHARLES SELIGSON, as Trustee in Bankruptcy of JOSEPH HAUPT & CO., a Limited Partnership Bankrupt, Plaintiff, -against- NEW YORK PRODUCE EXCHANGE; NEW YORK PRODUCE EXCHANGE CLEARING ASSOCIATION; DONALD V. MacDONALD; FAHNESTOCK & CO.; HARRY B. ANDERSON; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; WALTER C. KLEIN; BUNGE CORPORATION; HAROLD H. VOGEL; CONTINENTAL GRAIN COMPANY; SIDNEY FASHENA; I. USISKIN & CO.; CARL R. BERG; SOLOMON J. WEINSTEIN and DAVID L. BOYER, Defendants.	: 66 Civ. No. 1016

AMENDED ANSWER OF DEFENDANT, DONALD V. MacDONALD

Defendant, Donald V. MacDonald by Holtzmann, Wise & Shepard, his attorneys, for his amended answer to the amended complaint herein:

AS TO THE FIRST CAUSE OF ACTION:

1. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "1".

2. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "2".

3. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "3".

4. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "4" except admits that Fahnestock & Co. transacts business in the Southern District of New York.

5. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "5" except admits that Ira Haupt & Co. (hereinafter referred to as "Haupt") held itself out to be a limited partnership formed under the laws of the State of New York; that during 1963 and for many years prior thereto, Haupt was registered as a member of the New York Produce Exchange (the "Exchange") under and pursuant to the provisions of its bylaws, rules and regulations; was a clearing member of the New York Produce Exchange Clearing Association and was engaged in the commodities brokerage and commission business, with an office and principal place of business at No. 111 Broadway, New York, New York.

6. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "6".

7. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "7".

8. Denies each and all of the allegations contained in paragraph numbered "8" except admits that defendant Exchange is a non-stock, non-profit membership corporation created by special act of the New York State Legislature in

1862, being Chapter 359 of the Laws of 1862, as amended, that it is designated by the United States Secretary of Agriculture as a Contract Market on which persons dealing through members of the Exchange, registered with the Secretary of Agriculture, may buy and sell at open outcry across the ring on the floor of the Exchange cottonseed oil, cottonseed meal, soybean oil and tallow for future delivery commonly referred to as buying and selling futures contracts, and that the Exchange provides and regulates a suitable floor and facilities for that purpose at No. 2-8 Broadway, in the Borough of Manhattan, New York City.

9. Denies each and all of the allegations contained in paragraph numbered "9" except admits that defendant, New York Produce Exchange Clearing Association, is a stock corporation organized and existing under the laws of the State of New York, and that it maintains, at 60 Beaver Street, New York, New York, facilities for the clearance of commodity futures contracts purchased and sold on defendant Exchange.

10. Denies each and all of the allegations contained in paragraph numbered "10" except admits that pursuant to the organic law and bylaws of the Exchange only individuals may be elected to membership, that for a partnership to enjoy the privileges of membership it must be registered with the Exchange as a member by a general partner of the partnership who must also be an individual member of the Exchange and that for a corporation to enjoy the privileges of membership it must be registered with the Exchange as a member by an officer or bona fide employee who must also be an individual member of the Exchange and except admits that management of the Exchange is vested in a Board of Managers

consisting of the President, Vice-President, Treasurer and twelve Managers who must be individual members of the Exchange and fairly apportioned from among the various branches of trade interests represented in the Exchange.

11. Admits that he was a member of the Exchange and was for some time its President and a member of its Board of Managers elected by vote of the members and was also ex officio Chairman of the Executive Committee of the Exchange but, except as herein expressly admitted, denies each and all of the allegations contained in paragraph numbered "11" and deniesthat any combination, conspiracy or agreement ever existed or was involved.

12. Denies each and all of the allegations contained in paragraph numbered "12", except admits that Fahnestock & Co. is a New York partnership and that it is engaged in the stock and commodities brokerage business in the City of New York with its principal place of business at No. 65 Broadway, New York, New York.

13. Denies each and all of the allegations contained in paragraph numbered "13" except admits that Fahnestock is registered as a partnership with the Exchange for membership privileges pursuant to the bylaws of the Exchange and accordingly was entitled to certain benefits of membership and was subject to all of the duties, obligations, requirements and prohibitions contained in the bylaws, rules and regulations applicable to individual members, and denies that any combination, conspiracy or agreement ever existed or was involved.

14. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "14" except admits that defendant, Harry B. Anderson was a member of the Exchange, was a member of its Board of Managers duly elected by vote of the membership and that he was also a member of the Executive Committee and of the business conduct, cottonseed products and soybean oil committees of the Exchange and except that he denies that any combination, conspiracy or agreement ever existed or was involved.

15. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "15".

16. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "16" except admits that Merrill Lynch is registered as a corporation with the Exchange for membership privileges, pursuant to the bylaws of the Exchange, and except that he denies that any combination, conspiracy or agreement ever existed or was involved.

17. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered "17" except admits that defendant Walter C. Klein was a member of the Exchange and was for some time an elected member of the Board of Managers and was also for some time a member of the Executive Committee of the Exchange and except that he denies that any combination, conspiracy or agreement ever existed or was involved.

18. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "18".

19. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "19" except admits that Bunge is registered as a corporation with the Exchange for membership privileges, pursuant to the bylaws of the Exchange, and except that he denies that any combination, conspiracy or agreement ever existed or was involved.

20. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "20" except that he admits that defendant, Harold H. Vogel, was a member of the Exchange and was for some time the Vice-President and member of the Board of Managers duly elected by the membership and that he was a member of the Executive Committee of the Exchange and except that he denies that any combination, conspiracy or agreement ever existed or was involved.

21. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "21".

22. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "22" except admits that Continental is registered as a corporation with the Exchange for membership privileges, pursuant to the bylaws of the

Exchange and except that he denies that any combination, conspiracy or agreement ever existed or was involved.

23. Admits that defendant, Sidney Fashena, was a member of the Exchange and was for some time its Treasurer and a member of the Board of Managers of the Exchange duly elected by vote of the membership and also was a member of the Executive Committee of the Exchange but except as herein expressly admitted, denies each and all of the allegations contained in paragraph numbered "23" and denies that any combination, conspiracy or agreement ever existed or was involved.

24. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "24".

25. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "25" except admits that Usiskin was registered as a partnership with the Exchange for membership privileges, pursuant to the bylaws of the Exchange, and except that he denies that any combination, conspiracy or agreement ever existed or was involved.

26. Admits the allegations contained in paragraph numbered "26".

27. Admits the allegations contained in paragraph numbered "27".

28. Admits the allegations contained in paragraph numbered "28".

29. (a) Denies each and all of the allegations contained in subparagraph "(a)" of paragraph numbered "29".

(b) Denies each and all of the allegations contained in subparagraph "(b)" of paragraph numbered "29".

30. Admits the allegations contained in paragraph numbered "30".

31. Denies each and all of the allegations contained in paragraph numbered "31" and avers that all purchases, sales and transfers of such commodity futures contracts are subject to the provisions of the Commodity Exchange Act and the regulations promulgated thereunder by the United States Secretary of Agriculture and to all of the bylaws, rules and regulations of the Exchange not disapproved by the United States Secretary of Agriculture.

32. Denies each and all of the allegations contained in paragraph numbered "32" except admits that contracts for future delivery made on the Exchange are subject to clearance through the Association in accordance with the charter, bylaws, rules, regulations and resolutions of the said Association and, if accepted by the Association for clearance, the Association thereupon becomes substituted as a seller to the buyer and as a buyer from the seller. For certainty as to clearance operation defendant begs leave to refer to the charter, bylaws, rules and regulations of the Association.

33. Denies each and all of the allegations contained in paragraph numbered "33" except admits that the privilege of clearing contracts for future delivery made on the Exchange may be granted or denied by the Board of

directors of the Association to members of the Exchange who are stockholders of the Association, partnerships who are stockholders of the Association having a partner who is a member of the Exchange, or corporations who are stockholders of the Association having an executive officer who is a member of the Exchange.

34. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "34" except admits that Fahnestock is a member of the Clearing Association.

35. Denies each and all of the allegations contained in paragraph numbered "35".

36. Denies each and all of the allegations contained in paragraph numbered "36" except admits that cottonseed oil for future delivery may be purchased and sold at open outcry across the ring on the floor of the Exchange.

37. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "37".

38. Admits the allegations contained in paragraph numbered "38".

39. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "39" except admits that the Exchange is a contract market designated by the Secretary of Agriculture under and pursuant to the provisions of the Commodity Exchange Act and regulations thereunder.

40. Denies each and all of the allegations contained in paragraph numbered "40".

41. Denies each and all of the allegations contained in paragraph numbered "41".

42. Denies each and all of the allegations contained in paragraph numbered "42".

43. Denies each and all of the allegations contained in paragraph numbered "43".

44. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "44" except admits that Haupt, as a member of the Exchange and as a broker and commission merchant registered with the Secretary of Agriculture under and pursuant to the provisions of the Commodity Exchange Act, was privileged to buy and sell futures contracts in cottonseed oil on the floor of the Exchange, and as a member of the Clearing Association was privileged to clear such contracts through the Association in accordance with its charter, bylaws, rules, regulations and resolutions and that Haupt exercised such privileges.

45. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "45".

46. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "46".

47. Denies each and all of the allegations contained in paragraph numbered "47".

48. Denies each and all of the allegations contained in paragraph numbered "48".

49. Denies each and all of the allegations contained in paragraph numbered "49".

50. Denies each and all of the allegations contained in paragraph numbered "50".

51. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "51".

52. Denies each and all of the allegations contained in paragraph numbered "52".

53. Denies each and all of the allegations contained in paragraph numbered "53".

54. Denies each and all of the allegations contained in paragraph numbered "54".

55. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "55".

56. Denies each and all of the allegations contained in paragraph numbered "56".

57. Denies each and all of the allegations contained in paragraph numbered "57".

AS TO THE SECOND CAUSE OF ACTION:

58. Repeats the contents of paragraphs 1 to 57 hereof, both inclusive, with the same force and effect as

though here set forth in full and at length.

59. Denies each and all of the allegations contained in paragraph numbered "59".

60. Denies each and all of the allegations contained in paragraph numbered "60".

61. Denies each and all of the allegations contained in paragraph numbered "61".

62. Denies each and all of the allegations contained in paragraph numbered "62".

AS TO THE THIRD CAUSE OF ACTION.

63. Repeats the contents of paragraphs "1" to "62", both inclusive, hereof with the same force and effect as though here set forth in full and at length.

64. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs numbered "64" and "65".

FOR A FIRST DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

65. Upon information and belief plaintiff's amended complaint fails to state a claim against this defendant upon which relief can be granted.

FOR A FIRST DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION, ALLEGES:

66. Upon information and belief this Court is without jurisdiction over the subject matter of the first and second causes of action in that diversity of citizenship is lacking as to each such cause of action, in that neither cause of action involves a dispute or controversy respecting

the validity, construction or effect of the laws of the United States upon a determination of which the result depends, and in that each cause of action is not separate and distinct from the other cause of action.

FOR A SECOND DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION, ALLEGES:

67. Upon information and belief neither the Commodity Exchange Act nor any Act of Congress contain any provisions, express or implied, for a civil remedy by suit for damages in the United States District Court by a member of a contract market, floor broker or futures commission merchant against any other member, floor broker or futures commission merchant for violation of the Commodity Exchange Act and accordingly this Court is without jurisdiction to entertain this action and the same should be dismissed.

FOR A SECOND DEFENSE TO ALL THREE CAUSES OF ACTION. ALLEGES:

68. Upon information and belief, Haupt voluntarily made the purchases, sales and transactions in cottonseed oil futures contracts, referred to in the amended complaint, at open outcry across the ring on the floor of the Exchange, and voluntarily entered into agreement with the Clearing Association for the clearance of said contracts and transactions, as agent for Allied and affiliates, with full knowledge of the conditions of supply and demand in the cottonseed oil market and the probability of fluctuations of prices therein and well knowing that all such transactions in cottonseed oil futures contracts were made subject to the Commodity Exchange Act and Regulations and to the Charter, bylaws, rules, regulations and resolutions of defendant Exchange, including the

provisions respecting liabilities assumed, contingent or otherwise, by which Haupt and its customers were bound, and all losses, if any, in connection with the said purchases and sales, and the performance of said contracts were risks which Haupt as a member of defendant Exchange and clearing member of the Clearing Association with full knowledge, voluntarily assumed in making the said transactions and this defendant is not liable for any losses by Haupt in respect thereto.

FOR A THIRD DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

69. Upon information and belief Haupt's alleged losses and damages complained of, if any sustained, were not caused by any omissions, wrongful, negligent or unlawful acts on the part of this defendant but on the contrary, were occasioned solely by the negligent, wilful, wrongful, reckless, wanton and illegal acts and conduct and failures to act of Haupt, its agents and servants.

FOR A THIRD DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION, ALLEGES:

70. Upon information and belief, all of the transactions in cottonseed oil futures contracts made by Haupt as alleged in the amended complaint were made voluntarily and competitively at open outcry across the ring on the floor of the Exchange and said contracts were voluntarily cleared and settled by Haupt through the Clearing Association pursuant to and in accordance with its bylaws, rules, regulations and resolutions, from all of which transactions Haupt derived large commissions and profits and accordingly Haupt was and plaintiff is barred from maintaining the first and second causes of action.

FOR A FOURTH DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

71. Upon information and belief the injuries and losses to Haupt of which the plaintiff complains in its amended complaint were caused by the wanton, reckless and illegal conduct of Haupt and had Haupt not engaged in such misconduct it would not have suffered the losses of which the plaintiff now complains.

FOR A FIFTH DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

72. Upon information and belief after the acts, complained of by plaintiff in his amended complaint, which are alleged to have damaged Haupt and with full knowledge of all the facts in any way connected with or relating to the activities and matters complained of, and being represented by legal counsel, Haupt waived any objections thereto and duly ratified and confirmed the same in all respects by agreeing to the suspension of trading in cottonseed oil futures contracts on the Exchange and the settlement of all obligations under outstanding cottonseed oil futures contracts at values determined by the Board of Managers of the Exchange to be fair, reasonable and equitable to all parties to the said contracts and on November 21, 1963 defendants settled with Haupt any and all claims for damages which Haupt might have, and Haupt accepted from the Clearing Association and thereafter retained and plaintiff still retains the sum of $3,128,500.00 being the net proceeds to Haupt of the settlement, and the Clearing Association delivered to plaintiff and the plaintiff still retains the shares of capital stock of the Association owned by Haupt but held by the Association

as security for the payment of Haupt's obligations to the Association, all in full settlement, satisfaction, release and discharge of defendant from any and all claims and liability including the claims alleged in the complaint.

FOR A SIXTH DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

73. Upon information and belief numerous claims and suits by plaintiff and others on behalf of Haupt have been filed and presented seeking recovery of sums representing the same claimed losses stated in the amended complaint in this action, that large recoveries have been had and releases given by reason of which this defendant has been released and discharged from any liability to the plaintiff and plaintiff is barred and prevented from maintaining this action accordingly.

WHEREFORE, this defendant demands judgment dismissing the amended complaint herein together with the costs and disbursements in this action.

Dated: New York, New York
January 15, 1970.

HOLTZMANN, WISE & SHEPARD

By: _____
A Member of the Firm
Attorneys for Defendant
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Office and Post Office Address
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Telephone No. 422-7740

Answer and Counterclaim of Merrill Lynch, Pierce, Fenner & Smith, Inc.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

- X

CHARLES SELIGSON, as Trustee in Bankruptcy of IRA HAUPT & CO., a Limited Partnership, Bankrupt,

Plaintiff,

-against-

NEW YORK PRODUCE EXCHANGE, et al.,

Defendants.

66 Civ. No. 1016

ANSWER and COUNTERCLAIM of MERRILL LYNCH.

- X

Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated (hereinafter called "Merrill Lynch"), by its attorneys, Brown, Wood, Fuller, Caldwell & Ivey, answers the complaint herein as follows:

1. Denies each and every allegation in paragraph 1 which is intended to refer to Merrill Lynch, and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1, except it admits that this action purports to be brought under the statutory provisions referred to in paragraph 1.

2. Admits that the matter in controversy purports to exceed the sum or value referred to in paragraph 2.

3. Admits that this Court's jurisdiction of this action purports to exist under the statutory provisions referred to in paragraph 3.

4. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4, except it admits that Merrill Lynch is found and transacts business in the Southern District of New York.

5. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5, except it admits, upon information and belief, that Ira Haupt & Co. was engaged in business as a commodity futures commission broker, formerly with an office and principal place of business at 111 Broadway, New York, New York, and that during 1963 it was registered with and represented in membership on the New York Produce Exchange and that during 1963, until December 4, 1963, it held the privilege of clearing contracts for the future delivery of cottonseed oil through the New York Produce Exchange Clearing Association.

6. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6.

7. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7.

8. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8, except it admits, upon information and belief, that the New York Produce Exchange (hereinafter referred to as the "Exchange") is a membership corporation organized and existing under the laws of New York, and maintains a room and facilities for the purchase and sale of cottonseed oil for future delivery, commonly known as cottonseed oil futures, at 2 Broadway, New York, New York.

9. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9, except it admits, upon information

and belief, that the New York Produce Exchange Clearing Association (hereinafter referred to as the "Association"), is a stock corporation organized and existing under the laws of New York, and maintains facilities for the clearance of cottonseed oil futures purchased and sold on the Exchange, at 60 Beaver Street, New York, New York.

10. Denies each and every allegation in paragraph 10, and begs leave to refer to the exact provisions of the Charter and By-Laws of the Exchange.

11. Admits, upon information and belief, the allegations in paragraph 11.

12. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12, except it admits, upon information and belief, that Fahnestock & Co. is engaged in business as a commodity futures commission broker, in various states of the United States and in the City of New York, with its principal place of business at 65 Broadway, New York, New York.

13. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13.

14. Admits the allegations in paragraph 14.

15. Denies each and every allegation in paragraph 15, except it admits that it is a corporation organized and existing under the laws of Delaware, and that it is engaged in business as a commodity futures commission broker, in various states of the United States and in the City of New York, with its principal place of business at 70 Pine Street, New York, New York.

16. Denies each and every allegation in paragraph 16, except it admits that at the times mentioned Harry B. Anderson was a Vice President of Merrill Lynch and avers that as a member of the Exchange he, on December 1, 1958, applied to the Exchange for registration of Merrill Lynch with the Exchange, effective January 12, 1959, pursuant to Section 69 of the By-Laws of the Exchange, which application was accepted effective January 12, 1959, and Merrill Lynch became entitled to the privileges and subject to all the requirements and prohibitions set forth in said Section 69 of the By-Laws, and begs leave to refer to the exact provisions of such By-Laws.

17. Admits, upon information and belief, the allegations in paragraph 17.

18. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18, except it admits, upon information and belief, that Bunge Corporation is engaged in the business of buying and selling commodities in the City of New York and has a place of business at 1 Chase Manhattan Plaza, New York, New York.

19. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19, except it admits, upon information and belief, that at the times mentioned Walter C. Klein was President of Bunge Corporation.

20. Admits, upon information and belief, the allegations in paragraph 20.

21. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allega-

tions in paragraph 21, except it admits, upon information and belief, that Continental Grain Company is engaged in the business of buying and selling commodities in the City of New York and has a place of business at 2 Broadway, New York, New York.

22. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22.

23. Admits, upon information and belief, the allegations in paragraph 23.

24. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24, except it admits, upon information and belief, that I. Usiskin & Co. is engaged in business as a commodity futures commission broker in the City of New York and has a place of business at 32 Broadway, New York, New York.

25. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25.

26. Admits, upon information and belief, the allegations in paragraph 26.

27. Admits, upon information and belief, the allegations in paragraph 27.

28. Admits, upon information and belief, the allegations in paragraph 28.

29. (a) Denies each and every allegation in paragraph 29. (a) which is intended to refer to Merrill Lynch and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the

allegations in paragraph 29. (a), except it admits, upon information and belief, that at the times mentioned the named individuals were members of the Board of Managers of the Exchange and were associated with the respective companies named.

29. (b) Denies each and every allegation in paragraph 29. (b) which is intended to refer to Merrill Lynch and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29. (b).

30. Admits, upon information and belief, the allegations in paragraph 30.

31. Denies each and every allegation in paragraph 31 and begs leave to refer to the exact provisions of the Charter of the Exchange and the exact provisions of the Commodity Exchange Act.

32. Denies each and every allegation in paragraph 32, except it admits that contracts for future delivery made by members of the Exchange are subject to clearance through the Association and subject to its Charter, By-Laws and Rules, and in so far as such contracts are accepted for clearance the Association becomes substituted as a seller to the buyer and a buyer to the seller, and otherwise begs leave to refer to the exact provisions of the Charter, By-Laws and Rules of the Exchange and of the Association.

33. Denies each and every allegation in paragraph 33, except it admits that the privilege of clearing contracts for future delivery made on the Exchange may be granted or denied by the Board of Directors of the Asso-

ciation to members of the Exchange who are stockholders of the Association, partnerships who are stockholders of the Association having a partner who is a member of the Exchange, or corporations who are stockholders of the Association having an executive officer who is a member of the Exchange, and otherwise begs leave to refer to the exact provisions of the By-Laws of the Association and the Rules of the Exchange.

34. Denies each and every allegation in paragraph 34, except it admits, upon information and belief, that the firms and companies named in paragraph 34 held the privilege of clearing contracts for the future delivery of cottonseed oil through the Association, and begs leave to refer to the exact provisions of the By-Laws of the Association.

35. Denies each and every allegation in paragraph 35, and begs leave to refer to the exact provisions of the By-Laws of the Association.

36. Denies the allegation in paragraph 36, except it admits that cottonseed oil is one of the commodities purchased and sold for future delivery on the Exchange.

37. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37, except it admits that Merrill Lynch during the times mentioned for the account and risk of customers entered into contracts on the Exchange to buy or sell cottonseed oil for future delivery, and denies that it entered into contracts for its own account.

38. Denies each and every allegation in paragraph 38, and otherwise begs leave to refer to the exact provisions of the Commodity Exchange Act.

39. Denies each and every allegation in paragraph 39, except it admits that the Exchange at all times mentioned was a "contract market" designated as such by the Secretary of Agriculture, and otherwise begs leave to refer to the exact provisions of the Commodity Exchange Act.

40. Denies each and every allegation in paragraph 40, and begs leave to refer to the exact provisions of the Commodity Exchange Act, and the By-Laws, Rules and Regulations of the Exchange and of the Association.

41. Denies each and every allegation in paragraph 41, and begs leave to refer to the exact provisions of the By-Laws, Rules and Regulations of the Exchange and of the Association.

42. Denies each and every allegation in paragraph 42, and begs leave to refer to the exact provisions of the By-Laws, Rules and Regulations of the Exchange and of the Association.

43. Denies each and every allegation in paragraph 43 which is intended to refer to Merrill Lynch or to the defendant Harry B. Anderson (hereinafter called "Anderson"), and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43.

44. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44.

45. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45.

46. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46.

47. Denies each and every allegation in paragraph 47 which is intended to refer to Merrill Lynch or to Anderson, and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47.

48. Denies each and every allegation in paragraph 48 which is intended to refer to Merrill Lynch or to Anderson, and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48.

49. Denies each and every allegation in paragraph 49 which is intended to refer to Merrill Lynch or to Anderson, and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49.

50. Denies each and every allegation in paragraph 50 which is intended to refer to Merrill Lynch or to Anderson, and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50.

51. Denies each and every allegation in paragraph 51 which is intended to refer to Merrill Lynch or to Anderson, and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51.

52. Denies each and every allegation in paragraph 52 which is intended to refer to Merrill Lynch or to Anderson, and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52.

53. Denies each and every allegation in paragraph 53

which is intended to refer to Merrill Lynch or to Anderson, and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53.

54. Denies each and every allegation in paragraph 54 which is intended to refer to Merrill Lynch or to Anderson, and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54.

55. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55.

56. Denies each and every allegation in paragraph 56 which is intended to refer to Merrill Lynch or to Anderson, and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56.

57. Denies each and every allegation in paragraph 57 which is intended to refer to Merrill Lynch or to Anderson, and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57.

58. Repeats and realleges as its answer to paragraph 58 each and every allegation of its answers to paragraphs 1 to 57 with the same force and effect as if such answers were set forth herein at length.

59. Denies each and every allegation in paragraph 59 which is intended to refer to Merrill Lynch or to Anderson, and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59.

60. Denies each and every allegation in paragraph 60 which is intended to refer to Merrill Lynch or to Anderson, and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60.

61. Denies each and every allegation in paragraph 61 which is intended to refer to Merrill Lynch or to Anderson, and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61.

62. Denies each and every allegation in paragraph 62 which is intended to refer to Merrill Lynch or to Anderson, and otherwise alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 62.

Merrill Lynch sets forth its further defenses to the complaint herein as follows:

First Defense

The complaint fails to state a claim against Merrill Lynch upon which relief can be granted.

Second Defense

Ira Haupt & Co. initiated and participated in the activities and matters complained of and have so enjoyed the benefits thereof and have themselves so violated the Commodity Exchange Act, the anti-trust laws, other applicable statutes and law as to be disentitled from maintaining any of the alleged rights of action set forth in the complaint.

Third Defense

Ira Haupt & Co. are barred and prevented by law from maintaining any of the alleged rights of action set forth in the complaint by reason of the fact that the activities complained of, which Ira Haupt & Co. initiated and in which they participated, constitute criminal and illegal acts under the Commodity Exchange Act, the anti-trust laws, other applicable statutes and law.

Fourth Defense

Ira Haupt & Co. are barred and prevented by law from maintaining any of the alleged rights of action set forth in the complaint by reason of the fact that the controversy described in the complaint is one within the administrative jurisdiction of the Secretary of Agriculture and/or the Commodity Exchange Commission, created and acting pursuant to the provisions of the Commodity Exchange Act, 7 U.S.C. §§1-17(a) (1958), and said Secretary and/or said Commission have the statutory obligation to determine the questions involved in this action in so far as they relate to matters within the scope of the regulatory powers of said Secretary and/or said Commission, and Ira Haupt & Co. are obliged to seek redress therefor before said Secretary and/or said Commission.

Fifth Defense

Ira Haupt & Co. are barred and prevented from maintaining any of the alleged rights of action set forth in the complaint by reason of the fact that they were registered [illegible] and represented in membership on the New York Produce Exchange and were a clearing member of the New York Produce Exchange Clearing Association, and, as such,

were bound by the provisions of the Charter, By-Laws, Rules and Regulations of said Exchange and said Association, and they consented to all action in accordance therewith and all action of the defendants was in accordance therewith.

Sixth Defense

The participation of Merrill Lynch and the other defendants in the activities complained of was authorized and mandated by, and such defendants were acting under the authority of, the provisions of the Commodity Exchange Act, 7 U.S.C. §§1-17(a) (1958), and such activities cannot and did not therefore constitute a violation of said Act or of the anti-trust laws.

Seventh Defense

Ira Haupt & Co. voluntarily adopted a dangerous, hazardous, negligent and reckless method or manner of performing and financing the tasks which they were undertaking on behalf of Allied Crude Vegetable Oil Refining Corporation and its affiliated persons and corporations, including Anthony De Angelis, and of which they now complain, and they thereby assumed the risk of injury in so performing and undertaking.

Eighth Defense

Ira Haupt & Co. are barred and prevented by law from maintaining any of the alleged rights of action set forth in the complaint by reason of the fact that, upon information and belief, claims and suits on behalf of Ira Haupt & Co. have been filed and prosecuted seeking recovery of sums representing the same losses of which com-

plaint is made against defendants in this action, and by reason of plaintiff's election to continue the prosecution of said claims and suits.

Ninth Defense

Ira Haupt & Co. are estopped and prevented by law from maintaining any of the alleged rights of action set forth in the complaint, have waived any right to enforce the same and have released the defendants from any liability therefor, by reason of the fact that, with full knowledge of all the facts in any way connected with or relating to the activities and matters complained of, and being represented by legal counsel, Ira Haupt & Co. duly ratified and confirmed the same in all respects by agreeing to the suspension of trading on the Exchange in cottonseed oil for future delivery and liquidation of contracts carried by them at prices so fixed by the Exchange, and accepting on November 21, 1963 and retaining thereafter in full satisfaction thereof the net proceeds from the liquidation thereof, including the return to them of a sum in excess of Three Million Dollars ($3,000,000), representing margins deposited by Ira Haupt & Co. with the Association.

Tenth Defense

Ira Haupt & Co. are barred and prevented by law from maintaining any of the alleged rights of action set forth in the complaint by reason of the fact that the dangerous, hazardous, negligent and reckless method or manner of performing and financing the tasks which Ira Haupt & Co. were undertaking on behalf of Allied Crude Vegetable Oil Refining Corporation and its affiliated persons and corporations

including Anthony De Angelis, brought about an emergency situation threatening a panic in the market for vegetable oils and the standing and stability of both the Exchange and the Association, and the defendants were privileged in the circumstances to take the actions of which complaint is made to remedy the emergency situation so brought about by such course of dealing on the part of Ira Haupt & Co.

Merrill Lynch sets forth its further separate defense to the second claim of the complaint herein, as follows:

Separate Defense to Second Claim

Plaintiff has no standing to maintain the alleged right of action under the anti-trust laws set forth in the second claim by reason of the fact that Ira Haupt & Co. were only creditors of Allied Crude Vegetable Oil Refining Corporation and its affiliated persons and corporations, including Anthony De Angelis, in respect of the activities complained of.

Merrill Lynch sets forth its counterclaim herein, as follows:

COUNTERCLAIM

1. Upon information and belief, upon the insolvency of Ira Haupt & Co., arising out of their unlawful and reckless dealings with Allied Crude Vegetable Oil Refining Corporation and its affiliated persons and corporations, including Anthony De Angelis, as set forth in the complaint, the New York Stock Exchange, of which Ira Haupt & Co. and Merrill Lynch was each a member, undertook, pursuant to an agreement with Ira Haupt & Co. dated November 25,

1963, and on behalf of Ira Haupt & Co., to pay to the public customers of Ira Haupt & Co. certain sums, including free cash credit balances which were owed to such customers by Ira Haupt & Co.

2. Upon information and belief, the New York Stock Exchange expended the sum of Nine Million Five Hundred Thousand Dollars ($9,500,000) in connection with such undertaking on behalf of Ira Haupt & Co.

3. In order to replenish its treasury for such sum so expended on behalf of Ira Haupt & Co., the New York Stock Exchange assessed each of its members a fixed fee in connection with its securities brokerage transactions and Merrill Lynch paid to the New York Stock Exchange as its portion of said assessment the sum of One Million Forty-Seven Thousand Seven Hundred Eighty-One Dollars and Seventy-Two Cents ($1,047,781.72).

4. By reason of the foregoing expenditure by the New York Stock Exchange on behalf of Ira Haupt & Co. and the reimbursement of said Exchange through the aforesaid assessment paid by Merrill Lynch, Ira Haupt & Co. are indebted to Merrill Lynch in the amount of One Million Forty-Seven Thousand Seven Hundred Eighty-One Dollars and Seventy-Two Cents ($1,047,781.72), no part of which sum has been paid to Merrill Lynch, and Ira Haupt & Co. have thereby been unjustly enriched pro tanto.

WHEREFORE, defendant Merrill Lynch demands judgment dismissing the complaint herein and judgment in its favor on its counterclaim against plaintiff herein in the sum of One Million Forty-Seven Thousand Seven Hundred Eighty-One Dollars and Seventy-Two Cents ($1,047,781.72), together

with interest thereon from January 31, 1966 and the costs and disbursements of this action.

Dated: New York, New York
September 20, 1966

BROWN, WOOD, FULLER, CALDWELL & IVEY

By _____
A Member of the Firm

Attorneys for defendant Merrill Lynch,
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Donald V. MacDonald
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New York, N. Y.

Amended Answer and Counterclaim of New York Produce Exchange and Carl R. Berg

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SELIGSON, as Trustee in Bankruptcy of IRA HAUPT & CO., a Limited Partnership, Bankrupt, Plaintiff,	:	
-against-	:	66Civ. No. 1016
NEW YORK PRODUCE EXCHANGE, NEW YORK PRODUCE EXCHANGE CLEARING ASSOCIATION; DONALD V. MacDONALD; FAHNESTOCK & CO.; HARRY B. ANDERSON; MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED; WALTER C. KLEIN; BUNGE CORPORATION; HAROLD H. VOGEL; CONTINENTAL GRAIN COMPANY; SIDNEY FASHENA; I. USISKIN & CO.; CARL R. BERG; SOLOMON J. WEINSTEIN and DAVID L. BOYER, Defendants.	:	AMENDED ANSWER

ANSWER OF DEFENDANTS
NEW YORK PRODUCE EXCHANGE AND
CARL R. BERG TO AMENDED COMPLAINT

Defendants NEW YORK PRODUCE EXCHANGE and CARL R. BERG, by Holtzmann, Wise & Shepard, their attorneys, for their amended answer to the amended complaint herein:

AS TO THE FIRST CAUSE OF ACTION:

1. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "1".

2. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "2".

3. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations

contained in paragraph numbered "3"

4. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "4" except admit that they and defendant New York Produce Exchange Clearing Association ("Clearing Association") transact business in the Southern District of New York.

5. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "5" except admit that Ira Haupt & Co. (hereinafter referred to as "Haupt") held itself out to be a limited partnership formed under the laws of the State of New York; that during 1963 and for many years prior thereto, Haupt was registered as a member of the New York Produce Exchange under and pursuant to the provisions of its bylaws, rules and regulations; was a clearing member of the New York Produce Exchange Clearing Association and was engaged, among other things, in the commodities brokerage and commission business, with an office and principal place of business at No. 111 Broadway, New York, New York.

6. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "6".

7. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "7".

8. Deny each and all of the allegations contained in paragraph numbered "8" except that they admit that

defendant New York Produce Exchange is a non-stock, non-profit membership corporation created by special act of the New York State Legislature in 1862, being Chapter 359 of the Laws of 1862, as amended, that it is designated by the United States Secretary of Agriculture as a Contract Market on which persons dealing through members of the Exchange, registered with the Secretary of Agriculture, may buy and sell at open outcry, cottonseed oil, cottonseed meal, soybean oil and tallow for future delivery commonly referred to as buying and selling futures contracts and that it provides and regulates a suitable floor and facilities for that purpose at No. 2-8 Broadway, in the Borough of Manhattan, New York City.

9. Deny each and all of the allegations contained in paragraph "9" except that they admit that defendant New York Produce Exchange Clearing Association is a stock corporation organized and existing under the laws of the State of New York, and that it maintains, at 60 Beaver Street, New York, New York, facilities for the clearance of commodity futures contracts purchased and sold on the Exchange.

10. Deny each and all of the allegations contained in paragraph numbered "10" except admit that pursuant to the organic law and bylaws of the Exchange only individuals may be elected to membership, that for a partnership to enjoy the privileges of membership it must be registered with the Exchange as a member by a general partner of the partnership who must also be an individual member of the Exchange and that for a corporation to enjoy the privileges of membership

it must be registered with the Exchange as a member by an officer or bona fide employee who must also be an individual member of the Exchange and except that they admit that management of the Exchange is vested in a Board of Managers consisting of the President, Vice-President, Treasurer and twelve Managers who must be individual members of the Exchange and fairly apportioned from among the various branches of trade interests represented in the Exchange.

11. Admit defendant Donald V. MacDonald was a member of the Exchange and was for some time its President, and a member of its Board of Managers duly elected by vote of the members and was also ex officio Chairman of the Executive Committee of the Exchange but, except as herein expressly admitted, deny each and all of the allegations contained in paragraph numbered "11" and deny that any combination, conspiracy or agreement ever existed or was involved.

12. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "12".

13. Deny each and all of the allegations contained in paragraph numbered "13" except admit that Fahnestock is registered as a partnership with the Exchange for membership privileges pursuant to the bylaws of the Exchange and accordingly was entitled to certain benefits of membership and was subject to all of the duties, obligations, requirements and prohibitions contained in the bylaws, rules and regulations applicable to individual

members of the Exchange, and deny that any combination, conspiracy or agreement ever existed or was involved.

14. Admit defendant Harry B. Anderson was a member of the Exchange, and was for some time a member of its Board of Managers duly elected by vote of the membership and that he also was designated by the Board of Managers as a member of the Executive Committee, Business Conduct, Cottonseed Products and Soybean Oil Committees but, except as herein expressly admitted, deny each and all of the allegations contained in paragraph numbered "14" and deny that any combination, conspiracy or agreement ever existed or was involved.

15. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "15".

16. Deny each and all of the allegations contained in paragraph numbered "16" except admit that Merrill Lynch is registered as a corporation with the Exchange for membership privileges pursuant to the bylaws of the Exchange and accordingly was entitled to certain benefits of membership and was subject to all of the duties, obligations, requirements and prohibitions contained in the bylaws, rules and regulations of the Exchange applicable to individual members, and deny that any combination, conspiracy or agreement ever existed or was involved.

17. Admit defendant Walter C. Klein was a member of the Exchange and was for some time a member of the Board of Managers duly elected by the membership and that he also

was designated by the Board of Managers as a member of the Executive Committee of the Exchange but, except as herein expressly admitted, deny each and all of the allegations contained in paragraph numbered "17" and deny that any combination, conspiracy or agreement ever existed or was involved.

18. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "18".

19. Deny each and all of the allegations contained in paragraph numbered "19" except admit that Bunge is registered as a corporation with the Exchange for membership privileges pursuant to the bylaws of the Exchange and accordingly was entitled to certain benefits of membership and was subject to all of the duties, obligations, requirements and prohibitions contained in the bylaws, rules and regulations of the Exchange applicable to individual members, and deny that any combination, conspiracy or agreement ever existed or was involved.

20. Admit defendant Harold L. Vogel was a member of the Exchange and was for some time its Vice-President, and a member of its Board of Managers duly elected by vote of the membership and that he was also a member of the Executive Committee of the Exchange but, except as herein expressly admitted, deny each and all of the allegations contained in paragraph numbered "20" and deny that any combination, conspiracy or agreement ever existed or was involved.

21. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "21".

22. Deny each and all of the allegations contained in paragraph numbered "22" except admit that Continental is registered as a corporation with the Exchange for membership privileges pursuant to the bylaws of the Exchange and accordingly was entitled to certain benefits of membership and was subject to all of the duties, obligations, requirements and prohibitions contained in the bylaws, rules and regulations of the Exchange applicable to individual members, and deny that any combination, conspiracy or agreement ever existed or was involved.

23. Admit defendant Sidney Fashena was a member of the Exchange and was for some time its Treasurer and a member of its Board of Managers duly elected by vote of the membership and that he also was a member of the Executive Committee of the Exchange but, except as herein expressly admitted, deny each and all of the allegations contained in paragraph numbered "23" and deny that any combination, conspiracy or agreement ever existed or was involved.

24. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "24".

25. Deny each and all of the allegations contained in paragraph numbered "25" except admit that Usiskin is registered as a corporation with the Exchange for membership privileges pursuant to the bylaws of the Exchange and

accordingly was entitled to certain benefits of membership and was subject to all of the duties, obligations, requirements and prohibitions contained in the bylaws, rules and regulations of the Exchange applicable to individual members, and deny that any combination, conspiracy or agreement ever existed or was involved.

26. Admit the allegations contained in paragraph numbered "26".

27. Admit the allegations contained in paragraph numbered "27".

28. Admit the allegations contained in paragraph numbered "28".

29. (a) Deny each and all of the allegations contained in subparagraph "(a)" of paragraph numbered "29" except admit that each of the individuals whose name appears in said paragraph was at one time or another a member of the Board of Managers of the Exchange duly elected by vote of the membership but deny that such membership was pursuant to any combination, conspiracy or agreement and deny that any combination, conspiracy or agreement ever existed or was in any way involved in connection with or relating to such individual's election or service as an officer or member of the Board of Managers of the Exchange;

(b) Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in subparagraph designated "(b)" of paragraph numbered "29" except that they deny that they were ever

parties to or in any way involved in or connected with any combination, conspiracy or agreement.

30. Admit the allegations contained in paragraph numbered "30".

31. Deny each and all of the allegations contained in paragraph numbered "31" and aver that all purchases, sales and transfers of such commodity futures contracts are subject to the provisions of the Commodity Exchange Act and the regulations promulgated thereunder by the United States Secretary of Agriculture and to all of the bylaws, rules and regulations of the Exchange not disapproved by the United States Secretary of Agriculture.

32. Deny each and all of the allegations contained in paragraph numbered "32" and allege that contracts for future delivery made on the Exchange are subject to clearance through the Association in accordance with the charter, bylaws, rules and regulations of the said Association and, if accepted by the Association for clearance, the Association thereupon becomes substituted as a seller to the buyer and as a buyer from the seller. For certainty as to clearance operation these defendants beg leave to refer to the charter, bylaws, rules and regulations of the Association.

33. Deny each and all of the allegations contained in paragraph numbered "33" and allege that the privilege of clearing contracts for future delivery made on the Exchange may be granted or denied by the board of directors of the Association to members of the Exchange

who are stockholders of the Association, partnerships who are stockholders of the Association having a partner who is a member of the Exchange, or corporations who are stockholders of the Association having an executive officer who is a member of the Exchange.

34. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "34".

35. Deny each and all of the allegations contained in paragraph numbered "35".

36. Deny each and all of the allegations contained in paragraph numbered "36" and aver that cottonseed oil for future delivery may be purchased and sold only at open outcry across the ring on the floor of the Exchange.

37. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "37" except deny that at the times mentioned there were approximately 550 individual members of the Exchange and that during the year 1963 the volume of trading in cottonseed oil futures contracts exceeded 125,000 contracts having a total value of approximately $750 million.

38. Admit the allegations contained in paragraph numbered "38".

39. Deny each and all of the allegations contained in paragraph numbered "39" except admit that the Exchange is a contract market designated by the Secretary of

Agriculture under and pursuant to the provisions of the Commodity Exchange Act and regulations thereunder.

40. Deny each and all of the allegations contained in paragraph numbered "40".

41. Deny each and all of the allegations contained in paragraph numbered "41".

42. Deny each and all of the allegations contained in paragraph numbered "42".

43. Deny each and all of the allegations contained in paragraph numbered "43".

44. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "44" except admit that Haupt, as a member of the Exchange and as a broker and commission merchant registered with the Secretary of Agriculture under and pursuant to the provisions of the Commodity Exchange Act, was privileged to buy, sell and carry for others futures contracts in cottonseed oil made on the floor of the Exchange, and as a member of the Clearing Association was privileged to clear such contracts through the Association in accordance with its charter, bylaws, rules and regulations, and aver that Haupt exercised such privileges at great profit to itself.

45. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "45".

46. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "46".

47. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "47", except they deny that they ever were conspirators and that any conspiracy ever existed.

48. Deny each and all of the allegations contained in paragraph numbered "48".

49. Deny each and all of the allegations contained in paragraph numbered "49".

50. Deny each and all of the allegations contained in paragraph numbered "50".

51. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "51".

52. Deny each and all of the allegations contained in paragraph numbered "52".

53. Deny each and all of the allegations contained in paragraph numbered "53".

54. Deny each and all of the allegations contained in paragraph numbered "54".

55. Lack knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "55".

56. Deny each and all of the allegations contained in paragraph numbered "56".

57. Deny each and all of the allegations contained in paragraph numbered "57".

AS TO THE SECOND CAUSE OF ACTION:

58. Repeat the contents of paragraphs "1" to "57" hereof, both inclusive, with the same force and effect as though here set forth in full and at length.

59. Deny each and all of the allegations contained in paragraph numbered "59".

60. Deny each and all of the allegations contained in paragraph numbered "60".

61. Deny each and all of the allegations contained in paragraph numbered "61".

62. Deny each and all of the allegations contained in paragraph numbered "62".

AS TO THE THIRD CAUSE OF ACTION:

63. Repeat the contents of paragraphs "1" to "62" hereof, both inclusive, with the same force and effect as though here set forth in full and at length.

64. Deny each and every allegation contained in paragraphs numbered "64" and "65".

FOR A FIRST SEPARATE AND COMPLETE DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGE:

65. Upon information and belief, plaintiff is the Trustee in Bankruptcy of Ira Haupt & Co.

66. Defendant New York Produce Exchange (the

"Exchange") is a non-stock, non-profit membership corporation created by Special Act of the New York State Legislature in 1862, being Chapter 359 of the Laws of 1862, as amended, having its principal office and place of business at No. 2 Broadway in the Southern District of New York.

67. Defendant, New York Produce Exchange Clearing Association ("Clearing Association") is a New York stock corporation incorporated in 1904 pursuant to the Business Corporation Law. Its capital stock consists of 500 shares of the par value of $100.00 each.

68. The business of the Clearing Association is to handle for its stockholders who are Clearing Members of the Association the clearance and settlement of futures contracts made on the floor of the Exchange which are accepted for clearance by the Clearing Association pursuant to the charter, by-laws, rules and regulations of said Association.

69. Upon information and belief, during all the times mentioned in the complaint, plaintiff's bankrupt, Ira Haupt & Co. (hereinafter "Haupt") was a New York Limited Partnership having its principal office and place of business at No. 111 Broadway in the Southern District of New York.

70. During all of the times mentioned in the complaint, Haupt was a member of the Exchange.

71. During all the times mentioned in the complaint up to about November 22, 1963, Haupt was a stockholder in the Clearing Association and a clearing member thereof.

72. As one of the conditions to Haupt's admission to clearing membership and continuation of the privileges of a clearing member in the Clearing Association Haupt signed a written agreement to abide by the by-laws, rules and regulations of the Association as the same may be amended or added to from time to time and providing that such by-laws, rules and regulations shall be deemed to be incorporated in every contract or transaction which may be cleared with the Association.

73. Upon information and belief, the cottonseed oil futures contracts referred to in the amended complaint were offered by Haupt to and accepted by the Association for clearance through the Association with other clearing members pursuant to the by-laws, rules and regulations of the Association.

74. Upon information and belief, the amended complaint fails to state any claim against these defendants upon which relief can be granted.

FOR A SECOND SEPARATE AND COMPLETE DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION, ALLEGE:

75. Repeat the allegations of paragraphs "65" to "74" hereof, both inclusive, with the same force and effect as though here set forth at length.

76. This Court is without jurisdiction over the subject matter in that diversity of citizenship is lacking as to each cause of action, in that neither cause of action involves a dispute or controversy respecting the validity, construction or effect of the laws of the United States upon

a determination of which the result depends, and in that each cause of action is not separate and distinct from the other cause of action.

FOR A THIRD SEPARATE AND COMPLETE DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION, ALLEGE:

77. Repeat the allegations of paragraphs "65" to "74", both inclusive, and paragraph "76" hereof, with the same force and effect as though here set forth at length.

78. During all of the times mentioned in the complaint, the Exchange was, by order of the Secretary of Agriculture issued under and pursuant to the provisions of the Commodity Exchange Act (7 USCA §§ 1-17a), hereinafter sometimes referred to as the "Act", and the Regulations of the Secretary of Agriculture promulgated thereunder, designated a contract market on which contracts for cottonseed oil might be purchased and sold for future delivery, generally referred to as the purchase and sale of cottonseed oil futures contracts.

79. Under and pursuant to the provisions of said Act, cottonseed oil futures contracts are lawfully permitted to be bought and sold on the Exchange's designated contract market by a member of the Exchange who must be also registered with the Secretary of Agriculture as a floor broker or futures commission merchant as required by said Act and Regulations except that a member of the Exchange may trade for his own account without being so registered.

80. Upon information and belief, during all the times mentioned in the complaint, Haupt was registered with the Secretary of Agriculture as a floor broker and futures commission merchant as required by and in conformity with said Act and Regulations, and such registration had not expired and had not been suspended or revoked.

81. During all the times mentioned in the complaint Haupt was duly registered with the Exchange by one of its general partners, who was an individual member of the Exchange, for membership privileges pursuant to Section 69 of the Exchange's by-laws and accordingly, as expressly provided in the Commodity Exchange Act and in the by-laws of the Exchange, Haupt became and was subject to all of the provisions of the Charter, by-laws, rules, regulations and resolutions of the Exchange and required to observe and perform all of the duties and obligations required thereby the same in all respects as an individual member of the Exchange.

82. The Exchange provides an exchange floor at 2-8 Broadway, in the City of New York, where members of the Exchange who are registered with the Secretary of Agriculture, as required by the Act, may buy, sell and carry, as futures commission merchants (Commission House) futures contracts in cottonseed oil for the account of others.

83. As a consequence of the status of the Exchange and Haupt, as hereinabove alleged, Haupt and the Exchange and its designated contract market and all transactions in cottonseed oil made on the Exchange as alleged in the complaint were in all respects subject to the provisions of the

Commodity Exchange Act and Regulations thereunder.

84. The said Commodity Exchange Act places in the Secretary of Agriculture and in a Commission, composed of the Secretary of Agriculture, the Secretary of Commerce and the Attorney General, called the "Commodity Exchange Commission" sole regulatory powers over the Exchange and its contract market and all transactions made thereon in futures contracts.

85. Upon information and belief, said Act gives the Commodity Exchange Commission and the Secretary of Agriculture sole and exclusive jurisdiction over Exchanges and floor brokers and futures commission merchants, and places in the Commission and the Secretary of Agriculture the whole regulatory scheme governing transactions in cottonseed oil for future delivery, including maintenance of competition in commodity trading and pricing, with right of review of their decisions and orders by the United States Court of Appeals.

86. Upon information and belief, the amended complaint presents issues which, under the regulatory scheme of the Commodity Exchange Act, has been placed by Congress in the Secretary of Agriculture and the Commodity Exchange Commission in which and in whom original and primary jurisdiction rests, to determine the questions and issues presented by the first and second causes of action within the scope of the Act and Regulations.

87. Accordingly the first and second causes of action should be stayed until findings of fact and decisions are made and reported by the Commodity Exchange Commission.

FOR A FOURTH SEPARATE AND COMPLETE DEFENSE TO THE FIRST CAUSE OF ACTION, ALLEGE:

88. Repeat the allegations of paragraphs "65" to "74", both inclusive, "76" and "78" to "87", both inclusive, hereof with the same force and effect as though here set forth at length.

89. Neither the Commodity Exchange Act nor any other Act of Congress contain any provisions, express or implied, for a civil remedy by suit for damages in the United States District Court against an Exchange and its contract market by any member of the Exchange, floor broker, futures commission merchant or any other person, and accordingly this Court is without jurisdiction to entertain the first cause of action and the same should be dismissed.

FOR A SEPARATE AND COMPLETE DEFENSE, ON BEHALF OF THE NEW YORK PRODUCE EXCHANGE, TO ALL THREE CAUSES OF ACTION, ALLEGE:

90. Repeat the allegations of paragraphs "65" to "74", both inclusive, "76" and "78" to "87", both inclusive, and "89" hereof with the same force and effect as though here set forth at length.

91. Haupt used the facilities afforded by the Exchange to its members in making the transactions in cottonseed oil futures contracts referred to in the complaint.

92. At the time Haupt became a registered member of defendant Exchange to enable it to execute on the Exchange the cottonseed oil futures contracts for Allied and

others as alleged in the complaint, Haupt, as a condition precedent to its admission to membership privileges, expressly agreed in writing to be bound by the by-laws of the Exchange which specifically provide that the Exchange shall not be liable for any damages sustained by a member or his firm growing out of the use or enjoyment by such member or firm of the facilities afforded by the Exchange to its members for the conduct of their business.

93. By reason aforesaid Haupt waived any claim for and released the Exchange from all liability for any damages sustained by Haupt including any damages on account of the matters alleged in the amended complaint.

94. Accordingly Haupt was and plaintiff is barred from maintaining this suit.

FOR A FOURTH SEPARATE AND COMPLETE DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGE:

95. Repeat the allegations of paragraphs "65" to "74", both inclusive, "76", "78" to "87", both inclusive, "89", "91" to "94", both inclusive hereof with the same force and effect as though here set forth at length.

96. Upon information and belief, Haupt acted as broker for Allied and its affiliates in purchasing, selling and expitting on the floor of defendant Exchange, all of the cottonseed oil futures contracts mentioned in the amended complaint and also acted as futures commission merchant in carrying said contracts for Allied and clearing same through the Clearing Association.

97. All contracts made on the floor of the

Exchange for the purchase and sale of cottonseed oil for future delivery are made under, pursuant to, and in accordance with the provisions of the Commodity Exchange Act and of the Rules Regulating Transactions in Cottonseed Oil Futures Contracts Among Members of the New York Produce Exchange and of the Exchange's bylaws, rules, regulations and resolutions and all persons buying or selling such contracts on the floor of the Exchange are bound by the provisions of said Act and the said Rules and by the bylaws, rules, regulations and resolutions of the Exchange which constitute the terms and conditions of the contract of purchase and sale.

98. Haupt, as a floor broker or futures commission merchant registered with the Secretary of Agriculture under the Commodity Exchange Act, was subject to all of the provisions of said Act and Regulations thereunder, and was itself under duty to observe and conduct its business in good faith in accordance with said Act and Regulations and so as not to violate or do any act contrary to or inconsistent with the provisions of said Act and Regulations and to enforce the same by seeing to it that its customers, for whose account it bought, sold and handled futures contracts, at all times did likewise.

99. Haupt, as a member of the Exchange was likewise bound by the Charter and all of the provisions of the bylaws, rules, regulations and resolutions of the Exchange, and, as expressly provided therein, was subject to and required to observe and perform the duties, obligations, responsibilities and prohibitions imposed upon members of the Exchange.

100. Among the duties and obligations imposed upon Haupt by the Act and by the bylaws of the Exchange were: (a) to conduct its business in a lawful and honest manner, (b) not to cheat or defraud and not to participate in any scheme to cheat and defraud, (c) not to make false reports or statements or false records or attempt to deceive by any means whatever, (d) not to engage in excessive speculation in contracts for commodities for future delivery for its own account or for the account of customers, (e) not to manipulate or attempt to manipulate or participate in any manipulation or attempted manipulation by others, of the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any designated contract market, and (f) not to corner or attempt to corner or participate in any corner or attempt to corner by others of any such commodity, all of which are made crimes by Section 13 of the Commodity Exchange Act.

101. It was further the duty of Haupt as a member of the Exchange to use due diligence to ascertain and know the financial condition and all of the essential facts relative to its customers and to procure cash from its customers to properly margin, in accordance with the rules of the Exchange and the Clearing Association, its transactions in cottonseed oil futures contracts made on the floor of the Exchange and cleared through the Clearing Association for the account of such customers, and not for such purpose to make prodigal loans of money to customers on or accept as security for margin loans, field warehouse receipts for commodities and contracts of sale of commodities and thus jeopardize its financial position and the claims and property

of other customers and the financial standing of its fellow members of the Exchange and cause injury to the business and property of the Exchange and its members.

102. Under Section 6c of the Commodity Exchange Act and the bylaws, rules, regulations and resolutions of the Exchange, members of the Exchange are permitted to make "Ex-Ring" or "Ex-Pit" transfers of futures contracts when made in good faith and represented by the member to be for a bona fide and lawful business purpose.

103. Under the Commodity Exchange Act and Regulations and the bylaws and rules of the Exchange there is no limit to the number of futures contracts or transactions a person may make and have open on the Exchange if such contracts or transactions are legitimate, bona fide hedges as defined in the Act and Regulations; and under the bylaws, rules, regulations and resolutions of the Exchange a member is not required to secure from his customer any original margin on the purchase and sale of futures contracts which are such bona fide legitimate hedges.

104. Plaintiff's complaint, particularly paragrpahs numbered "44", "45" and "46" thereof, alleges, asserts and admits that his bankrupt, Haupt, as broker, commission merchant and Agent for Allied and affiliated persons and corporations, jointly with Allied and affiliated persons, engaged in activities with respect to the purchase and sale of cottonseed oil futures contracts on defendant Exchange the tendency and effect of which was (a) to artificially affect the prices of cottonseed oil futures contracts on the Exchange, (b) to cause sudden or unreasonable fluctuations in the prices of such contracts,

(c) to constitute undue and undesirable speculative activity in such contracts (d) to constitute a manipulation of the prices of such contracts, (e) to constitute a corner of such contracts, and (f) in general, to create a disorderly market for such contracts under conditions as not to fairly reflect the general value of the commodity.

105. Said acts alleged in paragraph "104" hereof are prohibited by the Commodity Exchange Act and are made crimes by Section 13 of said Act and by Section 2 of the Sherman Act and they also violate the provisions of the Charter, by-laws, rules and regulations of the Exchange.

106. Defendants at no time prior to the service of the complaint herein had any knowledge or notice or reason to believe the existence, if indeed they ever existed, of any of the activities alleged in paragraphs "44", "45" and "46" of the said amended complaint and allege that if Allied and affiliates did in fact engage in any such activities, Haupt as Allied's broker and Commission House financed and participated in such activities and fraudulently concealed the facts from the Exchange and the Commodty Exchange Authority in violation of its duties and obligations.

107. Upon information and belief, in further violation of the duties and obligations imposed upon Haupt by the Commodity Exchange Act, and by the Charter, by-laws, rules and regulations of the Exchange and in total disregard thereof and of sound business practices, Haupt

(a) without the knowledge of these defendants

(i) failed to use due diligence to ascertain the financial condition and essential facts regarding Allied;

(ii) falsely represented to the Exchange and the Clearing

Association that the futures contracts which Haupt entered into and was carrying for Allied were all hedges; (iii) engaged with Allied in excessive speculation in futures contracts for commodities; and (iv) made and accepted for Allied and affiliates contracts for future delivery of cottonseed oil and agreed in advance with Allied and affiliates that there would be no actual delivery taken of the oil but that settlement would be made on some future occurrence;

(b) in or about August 1963 made and accepted for Allied a large quantity of cottonseed oil futures contracts in spite of warnings by the Exchange of the financial risks involved and thereafter wilfully, wantonly and recklessly continued to increase its financial exposure in the commodity markets despite Haupt's knowledge of and repeated warnings by the Exchange, the Clearing Association and Haupt's own employees of the financial risks involved;

(c) between October and November 11, 1963 failed and refused to reduce its net open position in cottonseed oil futures contracts in the Clearing Association after warning by the Exchange and the Association, Haupt's floor broker and Haupt's employees of the financial and other risks involved and suggestion by the Association, Haupt's floor broker and Haupt's employees to Haupt that it effect a reduction in such net position in order to reduce such risks;

(d) represented to the Exchange, in response to inquiries by the Exchange, that its long positions in the cottonseed oil futures market were all bona fide legitimate hedges, which representations were false and either known by Haupt to be false when made or the falsity of which could have been ascertained by Haupt upon reasonable investigation and inquiry;

(e) represented to the Exchange that even though all of Haupt's long positions in cottonseed oil futures contracts were bona fide hedges, they nevertheless were margined for more than the amount required by Exchange rules for non-hedge or speculative transactions, which representations were false and known by Haupt to be false when made;

(f) without the knowledge of the Exchange, factored for and recklessly made product loans of more than $20,000,000 to Allied and affiliated persons and corporations in disregard of prudent business practices and upon false, fraudulent and spurious field warehouse receipts for commodities and upon false, fraudulent and spurious contracts of sale of commodities, knowing the same to be false, fraudulent and spurious, or in reckless disregard of whether they were false, fraudulent and spurious by failing to make any inquiry as to their genuineness and validity and on the contrary expressly agreeing in advance with Allied not to make any such inquiries or investigations;

(g) on or about September 26 and 30, 1963, when required delivery of and payment for cottonseed oil on the October futures contracts was at hand, Haupt, in connection with an "Ex-Pit" sale or transfer,

under Section 6c of the Commodity Exchange Act, of 2454 October 1963 cottonseed oil futures contracts of a value of more than $20,000,000 from Haupt to Ralph N. Peters & Company and the resale or re-transfer thereof from Peters to Haupt three days thereafter, represented to the Exchange, at the time of the transaction in each case, that same was a bona fide legitimate transfer for a lawful business purpose. Upon information and belief, said representations were false and known by Haupt to be false when made. Subsequent to November 30, 1963 these defendants learned for the first time that in truth and in fact neither of the transfers had any bona fide business purpose whatsoever but on the contrary were made solely to reduce Haupt's liabilities thereon by over $20,000,000 as at the close of business on September 26, 1963, the time a statement of financial condition of Haupt was called for by the New York Stock Exchange, in order thereby to conceal from the Exchange the fact that Haupt was at that time in deficit of the net capital requirements of the said Stock Exchange's rules and thus prevent Haupt from being suspended by the said Exchange from membership and its consequent suspension by defendant Exchange from membership.

108. Upon information and belief, Haupt profited by over $900,000 in commissions by reason of its acts and transactions hereinabove alleged and other transactions for the Allied accounts, as alleged in the amended complaint.

109. Upon information and belief, in further violation of its duties and obligations to the Exchange, Haupt:

(a) maliciously combined, conspired and con-

nived with its customers, Allied and Anthony DeAngelis, and others, to and did make to various persons and the public false and malicious statements, insinuations and innuendos, among which were to the effect that the Exchange wanted to take Allied's business from Haupt and give it to other members of the Exchange, that the Exchange issued licenses to warehouses for storage of cottonseed oil, tenderable in satisfaction of futures contracts, with a view to injurying Haupt and Allied, and other false and malicious statements and representations with a view to and causing, among other things, extensive and prolonged investigations of the Exchange by the Attorney General of the State of New York without just cause, to the great expense, harassment and annoyance of defendant Exchange, its officers, managers and employees and with consequent publication in newspapers of false and derogatory statements concerning the Exchange, all to the great damage and injury to the Exchange, its contract market, business and property;

(b) made necessary, in order to protect the integrity of contracts made on the Exchange and negotiable warehouse receipts registered with the Exchange, the removal and storage in other licensed warehouses, at great expense and damage to the Exchange, of large quantities of cottonseed oil, against which negotiable warehouse receipts had been issued by the warehouseman and registered by the Exchange as good for delivery in satisfaction of cottonseed oil futures contracts made on the Exchange.

110. Upon information and belief, by reason aforesaid Haupt was and plaintiff is barred and prevented by law from maintaining this action.

FOR A FIFTH, SEPARATE AND COMPLETE DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGE:

110. Repeat the allegations of paragraphs "65" to "74", both inclusive, "76", "78" to "87", both inclusive, "89", "91" to "94", "96" to "109", both inclusive, hereof, with the same force and effect as though here set forth at length.

111. Upon information and belief, Haupt voluntarily made the purchases, sales and transactions in cottonseed oil futures contracts, referred to in the complaint, at open outcry across the ring on the floor of the Exchange, and voluntarily entered into agreement with the Clearing Association for the clearance of said contracts and transactions, as agent for Allied and affiliates, with full knowledge of the conditions of supply and demand in the cottonseed oil market and the probability of fluctuations of prices therein and well knowing that all such transactions in cottonseed oil futures contracts were made subject to the Commodity Exchange Act and Regulations and to the Charter, bylaws, rules, regulations and resolutions of defendant Exchange, including the provisions respecting liabilities assumed, contingent or otherwise, by which Haupt and its customers were bound, and all losses, if any, in connection with the said purchases and sales, and the performance of said contracts were risks which Haupt as a member of defendant Exchange with full knowledge voluntarily assumed in making the said transactions and these defendants are not liable for any losses by Haupt in respect thereto.

FOR A SIXTH SEPARATE AND COMPLETE DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGE:

112. Repeat the allegations of paragraphs "65" to "74", both inclusive, "76", "78" to "87", both inclusive, "89", "91" to "94", both inclusive, "96" to "109", both inclusive, and "111" hereof, with the same force and effect as though here set forth at length.

113. Because of Haupt's own negligent, wilful, reckless and wanton conduct in its dealings with and on behalf of Allied, Anthony De Angelis and affiliates, and in the commodity markets in general as alleged in paragraphs "96" to "108" hereof including (a) accepting the Allied account against the advice of Haupt's legal counsel and with actual knowledge that numerous banks and brokerage houses had refused to transact business with Allied and Anthony De Angelis, (b) permitting its loans and financial commitments to and on behalf of Allied and in the commodity markets to reach proportions far exceeding limitations and violating the terms and conditions prescribed in a written agreement between Haupt and Allied and far exceeding limitations dictated by reasonably prudent business practices and the extent of Haupt's and Allied's recourses and (c) continuously increasing its financial exposure in connection with transactions for Allied and affiliates; Haupt deliberately exposed itself to foreseeable dangers of large financial losses.

114. Upon information and belief the injuries and losses to Haupt of which the plaintiff complains in its amended complaint were caused by the wanton, reckless and illegal conduct of Haupt as herein alleged and had Haupt not engaged in such misconduct it would not have suffered the losses of which the plaintiff now complains.

FOR A SEVENTH SEPARATE AND COMPLETE DEFENSE, TO ALL THREE CAUSES OF ACTION, ALLEGE:

115. Repeat the allegations of paragraphs "65" to "74", both inclusive, "76", "78" to "87", both inclusive, "89", "91" to "94", both inclusive, "96" to "109", both inclusive, "111", and "113" to "114", both inclusive, hereof, with the same force and effect as though here set forth at length.

116. Haupt's alleged losses and damages complained of, if any sustained, were not caused by any omissions, wrongful, negligent or unlawful acts on the part of the Exchange, or any of its officers, managers or employees but on the contrary, were occasioned solely by the negligent, wilfull, wrongful, reckless, wanton and illegal acts and conduct and failures to act of Haupt, its agents and servants.

FOR A FIRST SEPARATE AND COMPLETE DEFENSE TO THE SECOND CAUSE OF ACTION, ALLEGE:

117. Repeat the allegations of paragraphs "65" to "74", both inclusive, "76", "78" to "87", both inclusive, "89", "91" to "94", both inclusive, "96" to "109", both inclusive, "111", "113" to "114", both inclusive and "116" hereof, with the same force and effect as though here set forth at length.

118. The Exchange does not itself buy or sell or otherwise deal in cottonseed oil or transact any business in cottonseed oil whatsoever, and never has done so and has done no act, matter or thing and has suffered no act, matter or thing to be done by its members, or others using its facilities, with its knowledge, either alone or in combination with anyone,

to prevent or hamper full competition and free trade among its members and the public in accordance with the provisions of the Commodity Exchange Act, or to produce any distrubance in the market for cottonseed oil or interfere with the current of interstate and foreign commerce in cottonseed oil.

119. In order to procure an order of the Secretary of Agriculture, pursuant to the Commodity Exchange Act, designating defendant Exchange a contract market for trading in cottonseed oil for future delivery, the Exchange was required by the Act and the Regulations to and did promptly file with the Secretary of Agriculture copies of its organic law and of all of its bylaws, rules, regulations and resolutions and of all amendments thereto at any time thereafter made and the Secretary of Agriculture has received the same and has never disapproved of any thereof.

120. By virtue of the full regulatory powers vested in the Secretary of Agriculture and the Commodity Exchange Commission by the Commodity Exchange Act and Regulations over the entire scheme of marketing domestic agricultural commodities and trading in cottonseed oil for future delivery including maintenance of competition in commodity trading and pricing, with right of review vested in the United States Court of Appeals as hereinabove alleged, the Exchange is immune from the impact of the Federal antitrust laws and neither Haupt nor its trustee in bankruptcy may maintain the second cause of action.

FOR A SECOND SEPARATE AND COMPLETE DEFENSE TO THE SECOND CAUSE OF ACTION, ALLEGE:

121. Repeat the allegations of paragraphs "65" to "74", both inclusive, "76", "78" to "87", both inclusive, "89", "91" to "94", both inclusive, "96" to "109", both inclusive, "111", "113" to "114", both inclusive, "116" and "118" to "120", both inclusive hereof, with the same force and effect as though here set forth at length.

122. The Charter, bylaws, rules, regulations and resolutions of the Exchange constitute the contract between each member of the Exchange with each other member and between each member and the Exchange.

123. Upon information and belief, all of the transactions in cottonseed oil futures contracts made by Haupt on defendant Exchange as alleged in the complaint were in all respects in accordance with and subject to the Commodity Exchange Act and Regulations and to the Charter, bylaws, rules, regulations and resolutions of the Exchange, by which Haupt and the other members of the Exchange were and are bound.

124. Upon information and belief, Haupt, as broker or commission merchant and by virtue of its membership in the Exchange, greatly profited therefrom and realized large commissions and profits from its transactions made on the said Exchange including large commissions and profits from the transactions herein and in the amended complaint referred to.

125. Upon information and belief, by reason aforesaid Haupt was and plaintiff is barred from relief herein under the Antitrust Laws.

138a

Amended Answer and Counterclaim of New York Produce Exchange and Carl R. Berg

FOR AN EIGHTH SEPARATE AND COMPLETE DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGE:

126. Repeat the allegations of paragraphs "65" to "74", both inclusive, "76", "78" to "87", both inclusive, "89", "91" to "94", both inclusive, "96" to "109", both inclusive, "111", "113" to "114", both inclusive, "116", "118" to "120", both inclusive and "122" to "125", both inclusive hereof, with the same force and effect as though here set forth at length.

127. Upon information and belief after the acts, complained of by plaintiff in his Amended Complaint, which are alleged to have damaged Haupt and with full knowledge of all the facts in any way connected with or relating to the activities and matters complained of, and being represented by legal counsel, Haupt waived any objections thereto and duly ratified and confirmed the same in all respects by agreeing to the suspension of trading in cottonseed oil futures contracts on the Exchange and the settlement of all obligations under outstanding cottonseed oil futures contracts at values determined by the Board of Managers of the Exchange to be fair, reasonable and equitable to all parties to the said contracts and on November 21, 1963 defendants settled with Haupt any and all claims for damages which Haupt might have, and Haupt accepted and thereafter retained and plaintiff still retains the sum of $3,128,500.00 being the net proceeds to Haupt of the settlement, and the Clearing Association delivered to plaintiff the shares of capital stock of the Association owned by Haupt but held by the Association as security for the payment of Haupt's obligations to the Association, all in full settlement, satisfaction, release and discharge of defendants from any and all claims and liability including the claims alleged in the complaint.

FOR A SECOND SEPARATE AND COMPLETE DEFENSE TO THE THIRD CAUSE OF ACTION, ALLEGE:

128. Repeat the allegations of paragraphs "65" to "74", both inclusive, "76", "78" to "87", both inclusive, "89", "91" to "94", both inclusive, "96" to "109", both inclusive, "111", "113" to "114", "116", "118" to "120", both inclusive, "122" to "125", both inclusive and "127" hereof, with the same force and effect as though here set forth at length.

129. Upon information and belief before the commencement of this action and on or about and between November 11, and November 22, 1963 the $12,000,000.00 which plaintiff claims Haupt transferred to the Clearing Association, as alleged in the third cause of action, was fully satisfied and discharged by payments by the Association of the full amount thereof to or for the account of Haupt in payment and satisfaction of Haupt's contractual obligations pursuant to Haupt's authorization and the Association retained no part thereof.

FOR A THIRD SEPARATE AND COMPLETE DEFENSE TO THE THIRD CAUSE OF ACTION, ALLEGE:

130. Repeat the allegations of paragraphs "65" to "74", both inclusive, "76", "78" to "87", both inclusive, "89", "91" to "94", both inclusive, "96" to "109", both inclusive, "111", "113" to "114", "116", "118" to "120", both inclusive, "122" to "125", both inclusive, "127" and "129" hereof, with the same force and effect as though here set forth at length.

131. Upon information and belief plaintiff's alleged third cause of action did not accrue nor did any part of such cause of action accrue within the time prescribed by the applic

statute of limitations for the commencement of such action and the said claim is barred by the statute of limitations.

FOR A FOURTH SEPARATE AND COMPLETE DEFENSE TO THE THIRD CAUSE OF ACTION, ALLEGE:

132. Repeat the allegations of paragraphs "65" to "74", both inclusive, "76", "78" to "87", both inclusive, "89", "91" to "94", both inclusive, "96" to "109", both inclusive, "111", and paragraphs "112" to "115", both inclusive, "116", "118" to "120", both inclusive, "122" to "125", both inclusive, "127", "129" and "131" hereof, with the same force and effect as though here set forth at length.

133. Upon information and belief Haupt and the plaintiff had full notice and knowledge from November 11, 1963 of all the facts concerning the payment of said $12,000,000.00 to the Clearing Association alleged in the third cause of action and nevertheless Haupt and the plaintiff refrained from asserting said claim until now to the great prejudice and detriment of the rights of defendants including the right to claim against and recoup from third parties and others connected with the alleged transfer all of which have been lost to defendant Association and the Exchange.

134. Upon information and belief, Haupt and the plaintiff has accordingly been guilty of such laches in presenting said claim as to bar the plaintiff from maintaining the third cause of action.

FOR AN EIGHTH SEPARATE AND COMPLETE DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGE:

135. Repeat the allegations of paragraphs "65" to "74", both inclusive, "76", "78" to "87", both inclusive, "89", "91" to "94", both inclusive, "96" to "109", both inclusive, "111", "113" to "114", both inclusive, "116", "118" to "120", both inclusive, "122" to "125", both inclusive, "127", "129", "131" and "133" to "134" both inclusive hereof, with the same force and effect as though here set forth at length.

136. Upon information and belief numerous claims and suits by plaintiff and others on behalf of Haupt have been filed and presented seeking recovery of sums representing the same claimed losses stated in the amended complaint in this action, that large recoveries have been had and releases given by reason of which defendants have been released from any liability to the plaintiff and plaintiff is barred and prevented from maintaining this action accordingly.

FOR A NINTH SEPARATE AND COMPLETE DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGE:

137. Repeat the allegations of paragraphs "65" to "74", both inclusive, "76", "78" to "87", both inclusive, "89", "91" to "94", both inclusive, "96" to "109", both inclusive, "111", "113" to "114", both inclusive, "116", "118" to "120", both inclusive, "122" to "125", both inclusive, "127", "129", "131", "133"to "134", both inclusive and "136" hereof, with the same force and effect as though here set forth at length.

138. Upon information and belief prior to the commencement of this action and on or about November 21,

1963, the Clearing Association paid to Haupt the sum of $3,128,500.00 and released and delivered the shares of stock in the Association owned by Haupt and held by the Association as security for the obligations of Haupt to the Association in full accord, satisfaction and discharge of the claims asserted in the complaint.

FOR A COUNTERCLAIM BY DEFENDANT, NEW YORK PRODUCE EXCHANGE, ALLEGE:

139. Repeat the allegations of paragraphs "65" to "73", both inclusive, "78" to "82", both inclusive, "91" and "96" to "109", both inclusive, hereof with the same force and effect as though here set forth at length.

140. Prior to the wrongful acts of Haupt as hereinabove alleged, the cottonseed oil futures market of defendant Exchange was a broad and active one, thus furnishing producers, processors, dealers and consumers with adequate means to make sales and purchases of futures for the purpose of properly hedging their position in cottonseed oil and by-products and said market was extensively used by them for that purpose with resulting large financial profits and benefits to the Exchange and its members.

141. By reason of the carelessness and negligence of Haupt and its violation of the Commodity Exchange Act and Regulations and the Charter and bylaws of the Exchange, and other wrongful and illegal acts as hereinabove alleged and the violations by Haupt of Section "1" of the Sherman Act as alleged in paragraphs "44", "45" and "46" of the complaint, the cottonseed oil futures market of defendant Exchange was ruined; annual volume of purchases and sales of cottonseed oil

futures contracts decreased from over 100,000 contracts prior to November 20, 1963, to less than 1,000 contracts, the use of said market by producers, processors, consumers, dealers and others practically ceased and defendant Exchange was damaged in its business and property in the sum of at least $20,000,000.00.

WHEREFORE, these defendants demand judgment dismissing the amended complaint herein together with their costs and disbursements and defendant New York Produce Exchange demands judgment on its counterclaim for $60,000,000.00 representing threefold the damages sustained by it together with interest and its costs and disbursements, including reasonable counsel fees as provided by law.

Dated: New York, New York
January 15, 1970

HOLTZMANN, WISE & SHEPARD

By _____
A member of said firm

Attorneys for Defendants,
New York Produce Exchange and
Carl R. Berg
Office and Post Office Address
30 Broad Street
New York, New York 10004

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

CARL R. BERG, being duly sworn, deposes and says: that he is one of the defendants herein and is the Managing Director of the New York Produce Exchange, one of the other defendants named herein; that he has read the foregoing amended answer to the amended complaint herein and knows the contents thereof and that the same is true of his own knowledge except as to those matters stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Carl R. Berg

Sworn to before me this
16th day of January, 1970

Notary Public

KENNUTH D. ROBERTSON
Notary Public, State of New York
No. 52-3305575-Qualified in Suffolk Co.
Certificate filed in New York County
Commission Expires March 30, 1971

Amended Answer of I. Usiskin & Co.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SELIGSON, as Trustee in Bankruptcy of IRA HAUPT & CO., a Limited Partnership, Bankrupt, Plaintiff, -against- NEW YORK PRODUCE EXCHANGE; NEW YORK PRODUCE EXCHANGE CLEARING ASSOCIATION; DONALD V. MacDONALD; FAHNESTOCK & CO.; HARRY B. ANDERSON; MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED; WALTER C. KLEIN; BUNGE CORPORATION; HAROLD H. VOGEL; CONTINENTAL GRAIN COMPANY; SIDNEY FASHENA; I. USISKIN & CO.; CARL R. BERG; SOLOMON J. WEINSTEIN and DAVID L. BOYER, Defendants.	66 Civ. No. 1016 AMENDED ANSWER

AMENDED ANSWER
OF
DEFENDANT I. USISKIN & CO.

Defendant I. USISKIN & CO., by Holtzmann, Wise & Shepard, its attorneys, for its amended answer to the amended complaint herein:

AS TO THE FIRST CAUSE OF ACTION:

1. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "1".

2. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "2".

3. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "3".

4. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "4" except admits that it transacts business in the Southern District of New York.

5. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "5".

6. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "6".

7. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "7".

8. Denies each and all of the allegations contained in paragraph numbered "8" except admits that defendant Exchange is a non-stock, non-profit membership corporation created by special act of the New York State Legislature in 1862, being Chapter 359 of the Laws of 1862, as amended, that it is designated by the United States Secretary of Agriculture as a Contract Market on which persons dealing through members of the Exchange, registered with the Secretary of Agriculture, may buy and sell at open outcry, across the ring on the floor of the Exchange, cottonseed oil,

cottonseed meal, soybean oil and tallow for future delivery, commonly referred to as buying and selling futures contracts, and that the Exchange provides and regulates a suitable floor and facilities for that purpose at No. 2-8 Broadway, in the Borough of Manhattan, New York City.

9. Denies each and all of the allegations contained in paragraph numbered "9" except admits that defendant, New York Produce Exchange Clearing Association, is a stock corporation organized and existing under the laws of the State of New York, and that it maintains, at 60 Beaver Street, New York, New York, facilities for the clearance of commodity futures contracts purchased and sold on defendant Exchange.

10. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "10".

11. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "11" except denies that any combination, conspiracy or agreement ever existed or was involved.

12. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "12".

13. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "13".

14. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "14" except denies that any combination, conspiracy or agreement ever existed or was involved.

15. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "15".

16. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "16" except denies that any combination, conspiracy or agreement ever existed or was involved.

17. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "17" except denies that any combination, conspiracy or agreement ever existed or was involved.

18. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "18".

19. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "19" except denies that any combination, conspiracy or agreement ever existed or was involved.

20. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "20" except denies that any combination, conspiracy or agreement ever existed or was involved.

21. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "21".

22. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "22" except denies that any combination, conspiracy or agreement ever existed or was involved.

23. Admits defendant, Sidney Fashena, was a member of the Exchange and was for some time its Treasurer and a member of the Board of Managers of the Exchange, but except as herein expressly admitted, denies each and all of the allegations contained in paragraph numbered "23" and denies that any combination, conspiracy or agreement ever existed or was involved.

24. Denies each and all of the allegations contained in paragraph numbered "24" except that it admits that it is a partnership formed under the laws of the State of New York, is engaged in the commodities brokerage business and has its principal place of business at No. 32 Broadway, New York, New York.

25. Denies each and all of the allegations contained in paragraph numbered "25" except admits that it is registered as a corporation with the Exchange for membership privileges, pursuant to the bylaws of the Exchange.

26. Admits the allegations contained in paragraph numbered "26".

27. Admits the allegations contained in paragraph numbered "27".

28. Admits the allegations contained in paragraph numbered "28".

29. (a) Denies each and all of the allegations contained in subparagraph "(a)" of paragraph numbered "29".

(b) Denies each and all of the allegations contained in subparagraph designated "(b)" of paragraph numbered "29".

30. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "30".

31. Denies each and all of the allegations contained in paragraph numbered "31".

32. Denies each and all of the allegations contained in paragraph numbered "32" except admits that contracts for future delivery made on the Exchange are subject to clearance through the Association in accordance with the charter, bylaws, rules, regulations and resolutions of

the said Association and, if accepted by the Association for clearance, the Association thereupon becomes substituted as a seller to the buyer and as a buyer from the seller. For certainty as to clearance operation defendant begs leave to refer to the charter, bylaws, rules and regulations of the Association.

33. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "33".

34. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "34" except admits that it is a member of the Clearing Association,

35. Denies each and all of the allegations contained in paragraph numbered "35".

36. Denies each and all of the allegations contained in paragraph numbered "36" except admits that cottonseed oil for future delivery may be purchased and sold at open outcry across the ring on the floor of the Exchange.

37. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "37".

38. Admits the allegations contained in paragraph numbered "38".

39. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations

contained in paragraph numbered "39" except admits that the Exchange is a contract market designated by the Secretary of Agriculture under and pursuant to the provisions of the Commodity Exchange Act and regulations thereunder.

40. Denies each and all of the allegations contained in paragraph numbered "40".

41. Denies each and all of the allegations contained in paragraph numbered "41".

42. Denies each and all of the allegations contained in paragraph numbered "42".

43. Denies each and all of the allegations contained in paragraph numbered "43".

44. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "44".

45. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "45".

46. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "46".

47. Denies each and all of the allegations contained in paragraph numbered "47".

48. Denies each and all of the allegations contained in paragraph numbered "48".

49. Denies each and all of the allegations contained in paragraph numbered "49".

50. Denies each and all of the allegations contained in paragraph numbered "50".

51. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "51".

52. Denies each and all of the allegations contained in paragraph numbered "52".

53. Denies each and all of the allegations contained in paragraph numbered "53".

54. Denies each and all of the allegations contained in paragraph numbered "54".

55. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "55".

56. Denies each and all of the allegations contained in paragraph numbered "56".

57. Denies each and all of the allegations contained in paragraph numbered "57".

AS TO THE SECOND CAUSE OF ACTION:

58. Repeats the contents of paragraphs 1 to 57 hereof, both inclusive, with the same force and effect as though here set forth in full and at length.

though here set forth in full and at length.

59. Denies each and all of the allegations contained in paragraph numbered "59".

60. Denies each and all of the allegations contained in paragraph numbered "60".

61. Denies each and all of the allegations contained in paragraph numbered "61".

62. Denies each and all of the allegations contained in paragraph numbered "62".

AS TO THE THIRD CAUSE OF ACTION.

63. Repeats the contents of paragraphs "1" to "62", both inclusive, hereof with the same force and effect as though here set forth in full and at length.

64. Lacks knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs numbered "64" and "65".

FOR A FIRST DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

65. Upon information and belief plaintiff's amended complaint fails to state a claim against this defendant upon which relief can be granted.

FOR A FIRST DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION, ALLEGES:

66. Upon information and belief this Court is without jurisdiction over the subject matter of the first and second causes of action in that diversity of citizenship is lacking as to each such cause of action, in that neither cause of action involves a dispute or controversy respecting

the validity, construction or effect of the laws of the United States upon a determination of which the result depends, and in that each cause of action is not separate and distinct from the other cause of action.

FOR A SECOND DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION, ALLEGES:

67. Upon information and belief neither the Commodity Exchange Act nor any Act of Congress contain any provisions, express or implied, for a civil remedy by suit for damages in the United States District Court by a member of a contract market, floor broker or futures commission merchant against any other member, floor broker or futures commission merchant for violation of the Commodity Exchange Act and accordingly this Court is without jurisdiction to entertain this action and the same should be dismissed.

FOR A SECOND DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

68. Upon information and belief, Haupt voluntarily made the purchases, sales and transactions in cottonseed oil futures contracts, referred to in the amended complaint, at open outcry across the ring on the floor of the Exchange, and voluntarily entered into agreement with the Clearing Association for the clearance of said contracts and transactions, as agent for Allied and affiliates, with full knowledge of the conditions of supply and demand in the cottonseed oil market and the probability of fluctuations of prices therein and well knowing that all such transactions in cottonseed oil futures contracts were made subject to the Commodity Exchange Act and Regulations and to the Charter, bylaws, rules, regulations and resolutions of defendant Exchange, including the

provisions respecting liabilities assumed, contingent or otherwise, by which Haupt and its customers were bound, and all losses, if any, in connection with the said purchases and sales, and the performance of said contracts were risks which Haupt as a member of defendant Exchange and clearing member of the Clearing Association with full knowledge, voluntarily assumed in making the said transactions and this defendant is not liable for any losses by Haupt in respect thereto.

FOR A THIRD DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

69. Upon information and belief Haupt's alleged losses and damages complained of, if any sustained, were not caused by any omissions, wrongful, negligent or unlawful acts on the part of this defendant but on the contrary, were occasioned solely by the negligent, wilful, wrongful, reckless, wanton and illegal acts and conduct and failures to act of Haupt, its agents and servants.

FOR A THIRD DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION, ALLEGES:

70. Upon information and belief, all of the transactions in cottonseed oil futures contracts made by Haupt as alleged in the amended complaint were made voluntarily and competitively at open outcry across the ring on the floor of the Exchange and said contracts were voluntarily cleared and settled by Haupt through the Clearing Association pursuant to and in accordance with its bylaws, rules, regulations and resolutions, from all of which transactions Haupt derived large commissions and profits and accordingly Haupt was and plaintiff is barred from maintaining the first and second causes of action.

FOR A FOURTH DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

71. Upon information and belief the injuries and losses to Haupt of which the plaintiff complains in its amended complaint were caused by the wanton, reckless and illegal conduct of Haupt and had Haupt not engaged in such misconduct it would not have suffered the losses of which the plaintiff now complains.

FOR A FIFTH DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

72. Upon information and belief after the acts, complained of by plaintiff in his amended complaint, which are alleged to have damaged Haupt and with full knowledge of all the facts in any way connected with or relating to the activities and matters complained of, and being represented by legal counsel, Haupt waived any objections thereto and duly ratified and confirmed the same in all respects by agreeing to the suspension of trading in cottonseed oil futures contracts on the Exchange and the settlement of all obligations under outstanding cottonseed oil futures contracts at values determined by the Board of Managers of the Exchange to be fair, reasonable and equitable to all parties to the said contracts and on November 21, 1963 defendants settled with Haupt any and all claims for damages which Haupt might have, and Haupt accepted from the Clearing Association and thereafter retained and plaintiff still retains the sum of $3,128,500.00 being the net proceeds to Haupt of the settlement, and the Clearing Association delivered to plaintiff and the plaintiff still retains the shares of capital stock of the Association owned by Haupt but held by the Association

as security for the payment of Haupt's obligations to the Association, all in full settlement, satisfaction, release and discharge of defendant from any and all claims and liability including the claims alleged in the complaint.

FOR A SIXTH DEFENSE TO ALL THREE CAUSES OF ACTION, ALLEGES:

73. Upon information and belief numerous claims and suits by plaintiff and others on behalf of Haupt have been filed and presented seeking recovery of sums representing the same claimed losses stated in the amended complaint in this action, that large recoveries have been had and releases given by reason of which this defendant has been released and discharged from any liability to the plaintiff and plaintiff is barred and prevented from maintaining this action accordingly.

WHEREFORE, this defendant demands judgment dismissing the amended complaint herein together with the costs and disbursements in this action.

Dated: New York, New York
January 15, 1970

HOLTZMANN, WISE & SHEPARD

By: _____
A Member of the Firm
Attorneys for Defendant
I. Usiskin & Co.
Office and Post Office Address
30 Broad Street
New York, New York 10004
Telephone No. 422-7740

Amended Counterclaim of Merrill Lynch, Pierce, Fenner & Smith, Inc.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHARLES SELIGSON, as Trustee in Bankruptcy of IRA HAUPT & CO., a Limited Partnership, Bankrupt,	66 Civ. No. 1016
Plaintiff,	AMENDED COUNTERCLAIM of MERRILL LYNCH
-against-	
NEW YORK PRODUCE EXCHANGE, et al.,	
Defendants.	

Defendant, Merrill Lynch, Pierce, Fenner & Smith Incorporated (hereinafter called "Merrill Lynch"), by its attorneys, Brown, Wood, Fuller, Caldwell & Ivey, for its amended counterclaim herein, alleges upon information and belief as follows:

1. In November of 1963, Ira Haupt & Co. (hereinafter called "Haupt") became insolvent due to its unlawful and reckless dealings with Allied Crude Vegetable Oil Refining Corporation (hereinafter called "Allied") and its affiliated persons and corporations, including Anthony De Angelis.

2. Merrill Lynch, together with other members of the New York Stock Exchange (hereinafter called "Exchange"), acting through the Exchange, in an attempt to save Haupt from bankruptcy, paid to the securities customers and other creditors of Haupt certain sums, including free cash credit balances which were then owed to such securities customers by Haupt.

3. The amounts the various members of the Exchange paid to Haupt's securities customers and other creditors on behalf of Haupt aggregated approximately Nine Million Five Hundred Thousand Dollars ($9,500,000).

4. In order to replenish its treasury for such sum so expended on behalf of Haupt, the Exchange assessed each of its members a fixed fee based upon such member's securities brokerage transactions, and Merrill Lynch paid to the Exchange, as its portion of said assessment, the sum of One Million Forty Seven Thousand Seven Hundred Eighty-One Dollars and Seventy-Two Cents ($1,047,781.72).

5. Upon receipt of such payments from the Exchange by Haupt's securities customers, said customers assigned their claims against Haupt (representing the free cash credit balances in their securities accounts) to the Exchange.

6. Each of the assigned claims was then credited by the Exchange to a special fund entitled the "Expense Recovery Account".

7. The members of the Exchange, acting through the Exchange, made additional payments aggregating approximately Two Million Dollars ($2,000,000) to Haupt, who in turn paid such amount to various of its creditors, and by reason thereof, Haupt became and still is obligated to repay such amount to the Expense Recovery Account of the Exchange.

8. There are presently held in the Expense Recovery Account of the Exchange the assignments from Haupt's securities customers to the Exchange (representing said customers' claims against Haupt for the free cash credit balances in their respective securities accounts) totaling approximately Seven Million Five Hundred Thousand Dollars ($7,500,000), together with the claim against Haupt for approximately Two Million Dollars ($2,000,000).

9. The members of the Exchange are the beneficial owners and entitled to the assignments and other claims presently held in the Expense Recovery Account of the Exchange in direct proportion to the respective assessments paid by such members.

10. Merrill Lynch, having paid to the Exchange the amount of One Million Forty-Seven Thousand Seven Hundred Eighty-One Dollars and Seventy-Two Cents ($1,047,781.72), is the beneficial owner of the assignments and other claims held in the Expense Recovery Account of the Exchange to that extent.

11. By reason of the foregoing, Merrill Lynch is entitled to use the assignments and other claims of which it is the beneficial owner as aforesaid as an offset (to the extent of One Million Forty-Seven Thousand Seven Hundred Eighty-One Dollars and Seventy-Two Cents ($1,047,781.72))to reduce any judgment plaintiff may obtain against it.

WHEREFORE, Merrill Lynch demands that, in the event plaintiff should obtain judgment in any amount against Merrill Lynch, such judgment be reduced to the extent of One Million Forty-Seven Thousand Seven Hundred Eighty-One Dollars and Seventy-Two Cents ($1,047,781.72), together with interest thereon and the costs and disbursements of this action.

Dated: New York, New York
September 1, 1967

BROWN, WOOD, FULLER, CALDWELL & IVEY

By /s/ Howard T. Sprow
A Member of the Firm

Attorneys for Defendant,
Merrill Lynch, Pierce, Fenner & Smith
Incorporated,
70 Pine Street
New York, New York 10005
WH 4-2200

TO:

WEIL, GOTSHAL & MANGES
Attorneys for Plaintiff
60 East 42nd Street
New York, New York

HOLTZMANN, WISE & SHEPARD
Attorneys for New York Produce Exchange,
Carl R. Berg, Sidney Fashena and
I. Usiskin & Co.
30 Broad Street
New York, New York

BAER, MARKS, FRIEDMAN & BERLINER
Attorneys for New York Produce Exchange
Clearing Association, Solomon J. Weinstein
and David L. Boyer
70 Pine Street
New York, New York

EMMET, MARVIN & MARTIN
Attorneys for Fahnestock & Co. and
Donald V. MacDonald
48 Wall Street
New York, New York

DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD
Attorneys for Walter C. Klein and
Bunge Corporation
40 Wall Street
New York, New York

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Attorneys for Harold H. Vogel and
Continental Grain Company
575 Madison Avenue
New York, New York

SKUTCH & BURTON
Attorneys for Harry B. Anderson
70 Pine Street
New York, New York

Reply to Counterclaim of Bunge Corp.
and Walter C. Klein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

CHARLES SELIGSON, as Trustee in Bankruptcy of IRA HAUPT & CO., a Limited Partnership, Bankrupt,

Plaintiff,

-against-

NEW YORK PRODUCE EXCHANGE; NEW YORK PRODUCE EXCHANGE CLEARING ASSOCIATION; DONALD V. MacDONALD; FAHNESTOCK & CO.; HARRY B. ANDERSON; MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED; WALTER C. KLEIN; BUNGE CORPORATION; HAROLD H. VOGEL; CONTINENTAL GRAIN COMPANY; SIDNEY FASHENA; I. USISKIN & CO. CARL R. BERG; SOLOMON J. WEINSTEIN and DAVID L. BOYER,

Defendants.

REPLY TO COUNTERCLAIM OF DEFENDANT BUNGE CORPORATION

----------X

Plaintiff, Charles Seligson, by his attorneys, Weil, Gotshal & Manges, for his reply to the counterclaim of defendant Bunge Corporation herein, alleges, upon information and belief, as follows:

AS AND FOR A FIRST DEFENSE

1. Denies the allegations of Paragraphs 13 and 14 as repeated and realleged in Paragraph 15 except admits that during the period November 15 to 19, 1963, Ira Haupt & Co. ("Haupt") held at least 7,600 cottonseed oil futures contracts for the account and risk of Allied Crude Vegetable Oil Refining Corporation ("Allied").

2. Admits with respect to the allegations of Paragraph 16, that during the period November 15 to November 19, 1963 Haupt, through its clearing members on the Chicago Board of Trade, held for the account and risk of Allied, more than 6,000 soybean oil futures contracts on the Chicago Board of Trade.

3. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17.

4. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18.

5. Denies the allegations of Paragraph 19.

6. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20.

AS AND FOR A SECOND DEFENSE

7. Defendant's counterclaim fails to state a claim upon which relief can be granted against plaintiff herein.

AS AND FOR A THIRD DEFENSE

8. By virtue of the wrongful and illegal acts of defendant as alleged in the complaint herein, defendant is barred from maintaining any of the rights asserted in its counterclaim.

WHEREFORE, plaintiff demands judgment dismissing the counterclaim of defendant Bunge Corporation and awarding to plaintiff its costs and disbursements of this action related to said counterclaim.

Dated: New York, New York
May , 1968

WEIL, GOTSHAL & MANGES

By
Ira M. Millstein
A Member of the Firm
60 East 42nd Street
New York, New York
MU 2-7750

Attorneys for Plaintiff
Charles Seligson, as Trustee
in Bankruptcy of Ira Haupt
& Co.

Reply to Amended Counterclaim of Merrill Lynch, Pierce, Fenner & Smith, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

CHARLES SELIGSON, as Trustee in Bankruptcy of IRA HAUPT & CO., a Limited Partnership, Bankrupt,

Plaintiff,

-against-

NEW YORK PRODUCE EXCHANGE; NEW YORK PRODUCE EXCHANGE CLEARING ASSOCIATION; DONALD V. MacDONALD; FAHNESTOCK & CO.; HARRY B. ANDERSON; MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED; WALTER C. KLEIN; BUNGE CORPORATION; HAROLD H. VOGEL; CONTINENTAL GRAIN COMPANY; SIDNEY FASHENA; I. USISKIN & CO.; CARL R. BERG; SOLOMON J. WEINSTEIN and DAVID L. BOYER,

Defendants.

REPLY TO AMENDED COUNTERCLAIM OF DEFENDANT MERRILL, LYNCH, PIERCE, FENNER & SMITH, INCORPORATED

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Plaintiff, Charles Seligson, by his attorneys, Weil, Gotshal & Manges, for his reply to the amended counterclaim of defendant Merrill Lynch, Pierce, Fenner & Smith, Incorporated herein, alleges, upon information and belief, as follows:

AS AND FOR A FIRST DEFENSE

1. Denies the allegations of Paragraph 1.

2. Denies the allegations of Paragraph 2 except admits that pursuant to an agreement between and among the New York Stock Exchange, Ira Haupt & Co. ("Haupt") and Haupt's creditor banks the New York Stock Exchange undertook to pay the public securities customers of Haupt certain sums, including free cash credit balances, which were owed such customers by Haupt.

3. Denies the allegations of Paragraph 3 except admits that the New York Stock Exchange purportedly expended the sum of approximately $9,500,000 pursuant to the agreement of November 25, 1963.

4. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.

5. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 except admits that upon receipt of payments from the Exchange Haupt's securities customers purportedly assigned their claims against Haupt to the Exchange.

6. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6.

7. Denies the allegations of Paragraph 7 except admits that a sum approximating $2 million was paid by the Exchange to the liquidator of Haupt which amount was purportedly expended on behalf of Haupt and that a proof of claim which includes said $2 million has been filed by the New York Stock Exchange in the bankruptcy proceedings of Haupt.

8. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8.

9. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9.

10. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10.

11. Denies the allegations of Paragraph 11.

AS AND FOR A SECOND DEFENSE

12. Defendant's amended counterclaim fails to state a claim upon which relief can be granted against plaintiff herein.

AS AND FOR A THIRD DEFENSE

13. Defendant is not a proper party in interest and lacks standing to maintain the amended counterclaim in this action.

AS AND FOR A FOURTH DEFENSE

14. By virtue of the wrongful and illegal acts of defendant as alleged in the complaint herein defendant is barred from maintaining any of the rights asserted in its amended counterclaim.

WHEREFORE, plaintiff demands judgment dismissing the amended counterclaim of defendant Merrill Lynch, Pierce, Fenner & Smith, Incorporated and awarding to plaintiff its costs and disbursements of this action related to said counterclaim.

Dated: New York, New York
May , 1968.

WEIL, GOTSHAL & MANGES

By

Ira M. Millstein
A Member of the Firm
60 East 42nd Street
New York, New York
MU 2-7750

Attorneys for Plaintiff
Charles Seligson, as Trustee in Bankruptcy of Ira Haupt & Co.

Reply to Counterclaim of New York Produce Exchange and Carl R. Berg

3/12/70

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SELIGSON, as Trustee in Bankruptcy of IRA HAUPT & CO., a Limited Partnership, Bankrupt, Plaintiff, -against- NEW YORK PRODUCE EXCHANGE; NEW YORK PRODUCE EXCHANGE CLEARING ASSOCIATION; DONALD V. MacDONALD; FAHNESTOCK & CO.; HARRY B. ANDERSON; MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED; WALTER C. KLEIN; BUNGE CORPORATION; HAROLD H. VOGEL; CONTINENTAL GRAIN COMPANY; SIDNEY FASHENA; I. USISKIN & CO.; CARL R. BERG; SOLOMON J. WEINSTEIN and DAVID L. BOYER, Defendants.	REPLY TO COUNTER-CLAIM OF DEFENDANT NEW YORK PRODUCE EXCHANGE 66 Civ 1016 E.L.P.

Plaintiff, Charles Seligson, by his attorneys, Weil, Gotshal & Manges, for his reply to the counterclaim of defendant New York Produce Exchange contained in its answer to the amended complaint herein, alleges, upon information and belief, as follows:

AS AND FOR A FIRST DEFENSE

1. Admits the allegations of Paragraph 65 as repeated in Paragraph 139.

2. Admits the allegations of Paragraph 66 as repeated in Paragraph 139.

3. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67 as repeated in Paragraph 139.

4. Denies the allegations of Paragraph 68 as repeated in Paragraph 139 and respectfully refers to the New York Produce Exchange Clearing Association ("Clearing Association") Charter, by-laws, rules and regulations for a correct statement of the provisions thereof.

5. Admits the allegations of Paragraph 69 as repeated in Paragraph 139.

6. Admits with respect to the allegations of Paragraph 70 as repeated in Paragraph 139 that at all times mentioned in the complaint Ira Haupt & Co. ("Haupt") was a duly registered member of the New York Produce Exchange ("Exchange").

7. Admits the allegations of Paragraph 71 as repeated in Paragraph 139.

8. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 72 as repeated in Paragraph 139, and respectfully refers to the by-laws, rules and regulations of the Clearing Association for a correct statement of the provisions thereof.

9. Denies the allegations of Paragraph 73 as repeated in Paragraph 139.

10. Admits the allegations of Paragraph 78 as repeated in Paragraph 139.

11. Admits the allegations of Paragraph 79 as repeated in Paragraph 139.

12. Admits the allegations of Paragraph 80 as repeated in Paragraph 139.

13. Admits with respect to the allegations contained in Paragraph 81 as repeated in Paragraph 139 that at all times mentioned in the complaint Haupt was registered with the Exchange for membership privileges pursuant to Section 69 of the Exchange's by-laws and respectfully refers to the Commodity Exchange Act and to the by-laws of the Exchange for a correct statement of the provisions thereof.

14. Admits the allegations of Paragraph 82 as repeated in Paragraph 112.

15. Admits the allegations of Paragraph 91 as repeated in Paragraphs 95 and 139.

16. Denies the allegations of Paragraph 96 as repeated in Paragraph 139.

17. Denies the allegations of Paragraph 97 as repeated in Paragraph 139 except admits that all cotton-seed oil futures contracts made on the floor of the Exchange and all persons buying and selling such contracts on the floor of the Exchange are subject to the Commodity Exchange Act and, where applicable, lawful by-laws, rules, regulations and resolutions of the Exchange.

18. Denies the allegations of Paragraph 98 as repeated in Paragraph 139 except admits that Haupt, as a floor broker or futures commission merchant registered with the Secretary of Agriculture under the Commodity Exchange Act was subject to all of the applicable provisions of said Act and regulations thereunder, and respectfully refers to said Act and regulations for a correct statement of the provisions thereof.

19. Denies the allegations of Paragraph 99 as repeated in Paragraph 139 except admits that Haupt as a registered member of the Exchange was subject to lawful provisions of the Charter, by-laws, rules, regulations and resolutions of the Exchange and respectfully refers to said Charter, by-laws, rules regulations and resolutions for a correct statement of the provisions thereof.

20. Denies the allegations of Paragraph 100 as repeated in Paragraph 139 except admits that Haupt was subject to the Act and lawful by-laws of the Exchange and respectfully refers to said Act and the by-laws of the Exchange for a correct statement of the provisions thereof.

21. Denies the allegations of Paragraph 101 as repeated in Paragraph 139 except admits that Haupt was subject to lawful rules of the Exchange relating to margin and other requirements and respectfully refers to said rules for a correct statement of the provisions thereof.

22. Denies the allegations of Paragraph 102 as repeated in Paragraph 139 except admits that members of the Exchange are permitted to make "ex-ring" or "ex-pit" transactions of futures contracts under conditions set forth in the Commodity Exchange Act and the by-laws, rules, regulations and resolutions of the Exchange and respectfully refers to said Act and said by-laws,

rules, regulations and resolutions for a correct statement of the provisions thereof.

23. Denies the allegations of Paragraph 103 as repeated in Paragraph 139 except insofar as they relate to the period covered by the complaint and respectfully refers to the Commodity Exchange Act and the by-laws, rules, regulations and resolutions of the Exchange for a correct statement of the provisions thereof.

24. Denies the allegations of Paragraph 104 as repeated in Paragraph 139 insofar as such allegations relate to Haupt and otherwise respectfully refers to plaintiff's complaint for a correct statement of the allegations contained therein.

25. Repeats and realleges, with respect to the allegations of Paragraph 105 as repeated in Paragraph 139, the allegations of Paragraph 24 herein, and respectfully refers to the Commodity Exchange Act, the Sherman Act and the Charter, by-laws, rules and regulations of the Exchange for a correct statement of the provisions thereof.

26. Denies the allegations of Paragraph 106 as repeated in Paragraph 139.

27. Denies the allegations of Paragraphs 107, 107(a), 107(b), 107(c), 107(d), 107(e), 107(f), and 107 (g) as repeated in Paragraph 139 and further specifically denies that Haupt violated any duties or obligations imposed or

purportedly imposed upon Haupt by the Commodity Exchange Act or the Charter, by-laws, rules and regulations of the Exchange or acted in disregard thereof.

28. Denies the allegations of Paragraph 108 as repeated in Paragraph 139.

29. Denies the allegations of Paragraphs 109, 109(a) and 109(b) as repeated in Paragraph 139 and further specifically denies that Haupt violated any of its duties or obligations to the Exchange.

30. Denies that Haupt acted improperly or engaged in any wrongful or illegal acts as broker or futures commission merchant for Allied or otherwise and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 140.

31. Denies the allegations of Paragraph 141.

AS AND FOR A SECOND DEFENSE

32. The counterclaim fails to state a claim upon which relief can be granted against plaintiff herein.

AS AND FOR A THIRD DEFENSE

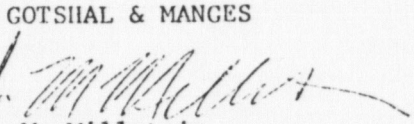
33. By virture of the wrongful and illegal acts of defendant New York Produce Exchange as alleged in the amended complaint herein defendant New York Produce Exchange is barred from maintaining any of the rights asserted in its counterclaim.

WHEREFORE, plaintiff demands judgment dismissing the counterclaim of defendant New York Produce Exchange

and awarding to plaintiff the costs and disbursements of this action relating to said counterclaim.

Dated: New York, New York
March 12, 1970

WEIL, GOTSHAL & MANGES

BY 

Ira M. Millstein
A Member of the Firm
767 Fifth Avenue
New York, New York 10021
PL 8-7800

Attorneys for Plaintiff
Charles Seligson, as Trustee
in Bankruptcy of Ira Haupt & Co.

175.1a

Stipulation Withdrawing Counterclaim

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- -x

CHARLES SELIGSON, as Trustee in Bankruptcy of IRA HAUPT & CO., a Limited Partnership,

Plaintiff,

66 Civ. No. 1016

-against-

NEW YORK PRODUCE EXCHANGE; NEW YORK PRODUCE EXCHANGE CLEARING ASSOCIATION; DONALD V. MacDONALD; FAHNESTOCK & CO.; HARRY B. ANDERSON; MERRILL, LYNCH, PIERCE, FENNER & SMITH, INCORPORATED; WALTER C. KLEIN; BUNGE CORPORATION; HAROLD H. VOGEL; CONTINENTAL GRAIN COMPANY; SIDNEY FASHENA; I. USISKIN & CO.; CARL R. BERG; SOLOMON J. WEINSTEIN and DAVID L. BOYER,

STIPULATION

Defendants.

- -x

WHEREAS, on May 15, 1967, plaintiff served a notice of motion seeking orders pursuant to Rules 12(b)(6) and 12(f) of the Federal Rules of Civil Procedure, dismissing and striking the counterclaim of defendant New York Produce Exchange, contained in its answer to the complaint herein, or, alternatively, for an order pursuant to the aforementioned Rules dismissing and striking said counterclaim to the extent that it seeks affirmative relief against plaintiff herein, which motion is now returnable before this Court on August 8, 1967; and

WHEREAS, plaintiff and the undersigned defendant are desirous of resolving and clarifying issues raised by plaintiff's motion;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between counsel for plaintiff and the defendant, New York Produce Exchange, as follows:

1. Defendant, New York Produce Exchange, hereby withdraws with prejudice the counterclaim asserted by it in its answer to the complaint herein but only to the extent that such counterclaim demands affirmative relief against plaintiff herein over and above the amount, if any, which plaintiff may recover in this action.

2. The withdrawal of said counterclaim as hereinabove provided shall be without prejudice to the right of the New York Produce Exchange to assert said counterclaim by way of reducing (by set-off, recoupment or otherwise) the amount of its liability, if any, to plaintiff as determined in this action, subject, however, to the ultimate determination of plaintiff's motion to dismiss and strike said counterclaim as insufficient in law and failing to state a claim upon which relief can be granted.

3. Plaintiff's motion to strike and dismiss the said counterclaim of the New York Produce Exchange on the grounds that said counterclaim fails to state a claim upon which relief can be granted and is insufficient in law, be and the same hereby is withdrawn as against defendant, New York Produce Exchange, without prejudice to the renewal thereof at such time as plaintiff may deem advisable and in accordance with the rules of this Court.

4. Nothing contained in this stipulation shall constitute or be deemed to be a waiver of plaintiff's right to a determination in respect of his motion to dismiss and strike the counterclaim asserted by defendant, New York Produce Exchange, on any basis which he now has or hereafter may assert, or a waiver of or in any way prejudice and impair any rights afforded the parties by the Federal Rules of Civil Procedure, and other applicable statutes and rules, all of which rights are expressly reserved hereby.

5. This stipulation is made for the purposes of this action only. Nothing contained in this stipulation shall constitute or be deemed or construed to be a waiver of or in any way to prejudice or impair any rights the defendant, New York Produce Exchange, has or may have in the bankruptcy proceedings of Ira Haupt & Co. and the general partners thereof, including the right to file in said bankruptcy proceedings a proof of claim or proofs of claim for damages in any amount claimed to have been sustained by the New York Produce Exchange by reason of the matters alleged in said counterclaim, in excess of the amount, if any, utilized to offset the amount of recovery, if any, by the plaintiff against the New York Produce Exchange in this action, all of which rights are expressly reserved by the New York Produce Exchange.

6. Plaintiff's time to reply to the counterclaim asserted in the answer of defendant, New York Produce Ex-

change, is hereby extended until 120 days from the date hereof.

Dated: New York, New York,
August 3, 1967.

/s/ Weil Gotshal & Manges

WEIL, GOTSHAL & MANGES,
Attorneys for Charles Seligson
as Trustee in Bankruptcy of
Ira Haupt & Co., a Limited
Partnership, Bankrupt

/s/ Holtzmann, Wise & Shepard

HOLTZMANN, WISE & SHEPARD
Attorneys for Defendant
New York Produce Exchange

SO ORDERED: 8/4/67

/s/ Walter R Mansfield
U.S. D.J.

Stipulation Withdrawing Counterclaim

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SILLIMAN, as Trustee in Bankruptcy of Lee Harpe & Co., a Limited Partnership, Bankrupt,

Plaintiff,

-against-

NEW YORK STOCK EXCHANGE; NEW YORK STOCK EXCHANGE CLEARING ASSOCIATION; DONALD V. [illegible]; [illegible] & CO.; [illegible] & B. [illegible]; MERRILL LYNCH, PIERCE, [illegible] & SMITH, INCORPORATED; WALTER C. [illegible]; BURNS CORPORATION; HAROLD H. VOGEL; [illegible] GLOBAL COMPANY; SIDNEY FASMENA; I. [illegible] & CO.; CARL H. [illegible]; SOLOMON J. [illegible] and DAVID L. [illegible],

Defendants.

66 Civ. No. 1016

STIPULATION

WHEREAS, on May 15, 1967, plaintiff served a notice of motion seeking orders pursuant to Rules 12(b)(6) and 12(f) of the Federal Rules of Civil Procedure, dismissing and striking the counterclaims of defendants, New York Stock Exchange, Reinhardt & Co., Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Burns Corporation, as contained in their respective answers to the complaint herein or, alternatively, for an order pursuant to the aforementioned rules dismissing and striking such counterclaims to the extent that they seek affirmative relief against plaintiff herein, which motion is now returnable before this Court on July 25, 1967; and

175.6a
Stipulation Withdrawing Counterclaim

plaintiff's motion;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between counsel for plaintiff and the counterclaimed defendants as follows:

1. Defendants Palmestock & Co., Merrill Lynch, Pierce, Fenner & Smith, Incorporated, and Image Corporation, hereby withdraw, with prejudice, the counterclaims asserted by them in their respective answers to the complaint herein to the extent that such counterclaims demand affirmative relief against plaintiff herein.

2. The withdrawal of such counterclaims as hereinabove provided shall be without prejudice to said defendants' right to assert such counterclaim by way of reducing, by way of set-off, recoupment or otherwise, their respective liabilities, if any, to plaintiff as determined in this action, subject, however, to the ultimate determination of plaintiff's motion to dismiss and strike said counterclaims as insufficient in law and failing to state a claim upon which relief can be granted.

3. Plaintiff's motion to strike and dismiss defendants' respective counterclaims on the grounds that each of said counterclaims fails to state a claim upon which relief can be granted and is insufficient in law, be and the same hereby is withdrawn as against defendants Palmestock & Co., Merrill Lynch, Pierce, Fenner & Smith,

[illegible], and [illegible] Corporation, without prejudice to the [illegible] of any such time as plaintiff may deem advisable and in accordance with the rules of this Court.

4. This Stipulation shall in no way affect plaintiff's motion to dismiss and strike the counterclaim asserted by defendant New York Produce Exchange in its answer to the complaint herein, which motion is presently scheduled to be heard by this Court on July 25, 1947.

5. Nothing contained in this Stipulation shall constitute or be deemed to be a waiver of plaintiff's right to a determination in respect of his motion to dismiss and strike the counterclaims asserted by each of the defendants named in paragraph 3 hereof, on any basis which he now has or hereafter may assert, or a waiver of or in any way prejudice and impair any rights afforded the parties by the Federal Rules of Civil Procedure, and other applicable statutes and rules, all of which rights are expressly reserved hereby.

6. Plaintiff's time to reply to the counterclaims asserted by each of the defendants named in paragraph 3 hereof in their respective answers to the complaint herein shall be and hereby is extended until 10 days from the date hereof.

Dated: New York, New York
July 24, 1947

[signature]

[illegible]
Attorneys for [illegible],
Trustee in Bankruptcy of the
[illegible], a Liberian [illegible],
Libelant.

Brown Wood Sullen, Caldwell & Beesley

Attorneys for Merrill Lynch,

Emmett, Marcia & Martin

Attorneys for Paine Webber & Co.

Davis, Polk & Wardwell, Bradley, Palmer & Wood

Attorneys for Thomas Cooperman and Walter J. Hilton

SO ORDERED

Morris Pierce
USDJ

Pre-Trial Order (Schedule A)

SCHEDULE A

STIPULATED FACTS

1. This action is brought under:

a. The Commodity Exchange Act (7 U.S.C. §§ 1-17a), to recover damages resulting from the claimed violation by defendants of said Act;

b. Sections 4 and 12 of the Clayton Act (15 U.S.C. §§ 15 and 22), and § 1 of the Sherman Act (15 U.S.C. § 1), to recover treble damages for the claimed violation by defendants of Section 1 of the Sherman Act; and

c. Section 70(e) of the Bankruptcy Act (11 U.S.C. § 110[e]), to void a transfer allegedly made and suffered by Ira Haupt & Co. to defendant New York Produce Exchange Clearing Association.

2. The matter in controversy exceeds the sum or value of $10,000.00 exclusive of interest and costs.

3. Jurisdiction of this action is based upon 28 U.S.C. Sections 1331 and 1337.

4. Each defendant is an inhabitant of or could, at the time suit was commenced, be found in the Southern District of New York, and in the case of each corporate or partnership defendant transacted business at that time in the Southern District of New York.

5. a) During 1963 Ira Haupt & Co. ("Haupt") was a partnership engaged in business as a registered broker/dealer in securities and as a commodity futures commission broker in various states of the United States and in the City of New York.

b) In 1963 and for many years prior thereto, Haupt was a member of the New York Stock Exchange, the American Stock Exchange and various other stock exchanges and commodity exchanges including the New York Produce Exchange.

c) Haupt was a Clearing Member of the New York Produce Exchange Clearing Association since April 13, 1945.

d) Haupt was registered with the Secretary of Agriculture as a Futures Commission Merchant during 1963.

6. On March 23, 1964, an involuntary petition in bankruptcy was filed against Haupt in the United States District Court for the Southern District of New York. The proceedings were referred generally to the Hon. Edward J. Ryan, Referee in Bankruptcy, and on June 26, 1964, said Referee in Bankruptcy entered a decree adjudging Haupt a bankrupt. On October 6, 1964, plaintiff was duly appointed Trustee of the bankrupt estate of Haupt and thereafter qualified, and plaintiff is presently the duly qualified and acting Trustee in Bankruptcy of Haupt.

7. Defendant New York Produce Exchange Clearing Association ("Association") was, in 1963, a stock corporation organized and existing under the laws of the State of New York and maintained facilities for the clearance of commodities futures contracts purchased and sold on the New York Produce Exchange.

8. a) Defendant New York Produce Exchange ("Exchange") was in 1963 a New York membership corporation and a contract market designated by the Secretary of Agriculture for buying and selling Prime Bleachable Summer Yellow Cottonseed Oil (hereinafter "cottonseed oil") for future delivery pursuant to the Commodities Exchange Act.

b) The Exchange was incorporated as the New York Commercial Association on April 19, 1862. On February 13, 1867, its name was changed to the New York Produce Exchange.

c) The Exchange stopped functioning as an Exchange in December 1972.

d) The Exchange was dissolved in May 1973.

9. Pursuant to the Charter and By-Laws of the Exchange during 1963 members of the Board of Managers were elected by the membership of the Exchange.

10. Pursuant to the Charter and By-Laws of the Exchange during 1963:

a) only individuals could be elected to membership on the Exchange;

b) such individuals could, through their membership and upon separate application by their firms, secure the status of "registered members" for their firms, pursuant to Section 69 of the By-Laws of the Exchange;

c) the management of the Exchange was vested in a Board of Managers consisting of the President, Vice President, Treasurer and twelve Managers. Slates of nominees for election to the Board of Managers were required to be fairly apportioned among the various branches of trade interests in the Exchange.

11. In October 1942 the Haupt firm became a registered member of the Exchange, pursuant to Section 69 of the By-Laws, through the membership of Samuel E. Worms. Following the death of Mr. Worms in July 1957, Mr. Ira Haupt applied for and was elected to membership on the Exchange. Mr. Haupt then filed an application whereby the Haupt firm applied for and was accepted as a registered member of the Exchange, effective August 1, 1957, pursuant to Section 69 of the By-Laws. Upon the death of Mr. Haupt on June 13, 1963, the Exchange authorized Joseph Kaufman to represent the Haupt firm on the floor of the Exchange. In July 1963, Joseph Kaufman applied for and was elected to membership on the Exchange. Mr. Kaufman then filed an application whereby the Haupt firm applied for and was accepted as a registered member of the Exchange, effective August 14, 1963, pursuant to Section 69 of the By-Laws.

12. Allied Crude Vegetable Oil Refining Corporation was one of the major firms engaged, in 1963 and for several years prior thereto, in the business of refining, storing, selling and exporting soybean and cottonseed oils and other products. In addition to conducting busines in its own name, Allied operated through a number of subsidiary or related corporations or individuals, and all of the subsidiary or related corporations or individuals or affiliated persons are referred to herein collectively as "Allied." Allied's main plants and "tank farms" were located in Bayonne, New Jersey with waterfront facilities for direct loading of seagoing tankers. A portion of the vegetable oils sold by Allied was refined and stored at Bayonne.

13. Allied was not a member of the Exchange.

14. In 1963, and for several years prior thereto, Anthony DeAngelis ("DeAngelis" or "Tino") was the President of Allied and owned a majority of Allied's stock.

15. DeAngelis was not a member of the Exchange.

16. a) From June 1962 to June 1965, defendant Donald V. MacDonald ("MacDonald") was a member of the Board of Managers, President of the Exchange and, as such, was Chairman of the Executive Committee. By 1963, MacDonald had been a member of the Exchange for more than twenty years.

b) During 1963, MacDonald was employed by Fahnestock & Co. as manager of its Commodities Department.

17. a) Defendant Harry B. Anderson ("Anderson") was, in 1963, a member of the Exchange's Board of Managers, the Executive Committee, the Business Conduct Committee, and the Cottonseed Products and Soybean Oil Committee of the Exchange. He was a member of the Board of Managers from 1957 to June 1965.

b) Anderson was nominated as a member of the Board of Directors of the Association on October 15, 1963 and elected to serve effective December 4, 1963.

18. a) Defendant Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill Lynch") is and was in 1963 a corporation organized and existing under the laws of the State of Delaware, engaged in business as a registered broker-dealer in securities and as a commodity futures commission broker, in various states of the United States and in the City of New York. In 1963, Merrill Lynch was a member of the New York Stock Exchange, the American Stock Exchange, and various other stock exchanges and commodity exchanges including the New York Produce Exchange.

b) Merrill Lynch became a corporation in 1959 and was, at that time, a member firm of the New York Stock Exchange, a registered member of the New York Produce Exchange and a clearing member of the New York Produce Exchange Clearing Association. Prior to 1959 Merrill Lynch, as a partnership and through predecessor partnerships, had been a member of these organizations for many years.

c) Merrill Lynch was registered with the Secretary of Agriculture as a Futures Commission Merchant during 1963.

19. Defendant Anderson was, in 1963, a Vice-President and Director of defendant Merrill Lynch's Commodities Division.

20. As a member of defendant Exchange, Anderson, on December 1, 1958, applied to the Exchange for registration of Merrill Lynch with the Exchange pursuant to Section 69 of the By-Laws of the Exchange, which application was accepted effective January 12, 1959. This registration was current

through 1963, and Merrill Lynch was a registered member of the Exchange at all times during 1963.

21. Defendant Walter C. Klein ("Klein") was, in 1963, a member of defendant Exchange and, from June 1962 to June 1965, was a member of the Board of Managers and a member of the Executive Committee of the Exchange.

22. Defendant Bunge Corporation ("Bunge"), a corporation organized and existing under the laws of the State of New York, is and was in 1963 engaged in the business, among other things, of buying and selling commodities in various states of the United States and in foreign countries.

23. a) Defendant Bunge in 1963 and since at least 1941 was a registered member of the defendant Exchange pursuant to Section 69 of the By-Laws of the Exchange. Simon Kern, a member of the Exchange and a Vice President of Bunge Corporation, applied on October 13, 1959 to the Exchange for registration of Bunge with the Exchange pursuant to Section 69 of the By-Laws of the Exchange, which application was accepted effective November 2, 1959. This registration was current through 1963.

b) Bunge in 1963 and for many years prior thereto was a member of the New York Produce Exchange, the Chicago Board of Trade and other commodity exchanges.

c) Bunge was registered with the Secretary of Agriculture as a Futures Commission Merchant during 1963.

24. a) Defendant Klein was, in 1963, President and a Director of defendant Bunge.

b) Klein was first employed by Bunge in 1947 and became President of Bunge in 1959.

25. The following persons were in 1963 employees of Bunge in the capacities noted: (i) Hamilton G. Kenner, Chief Counsel, (ii) Harry D. Fornari, a Vice President of the Oil Deaprtment, (iii) Richard Forti, a Vice President of the Oil Department, and (iv) Karl E. Groeneveld, the Senior Traffic Manager of the Oil Department.

26. a) During 1960-1963, Bunge had a business relationship with Allied which included the purchase and sale of vegetable oil and extensions of credit from Bunge to Allied.

b) Additionally, in October and November, 1963, Bunge had acted as a broker for Allied and carried 2,500 soybean oil futures contracts for Allied on the Chicago Board of Trade and carried through Merrill Lynch as clearing broker 1,000 cottonseed oil futures contracts for Allied on the Exchange.

27. Defendant Harold H. Vogel ("Vogel") was in 1963 a member of the Exchange, a member of the Exchange's Board of Managers, a member of the Executive Committee of the Exchange, Vice-President of the Exchange, and a member of the Admissions Committee and Trade and Transportation Committee.

b) [illegible] tinental") was formed as a corporation in 1926 pursuant to the laws of the State of Delaware, and is and was in 1963 engaged in the business of buying, selling and exporting grains and other commodities including vegetable oils.

b) In 1963 and for many years prior thereto, Continental was a member of the New York Produce Exchange,

the Chicago Board of Trade and other commodity exchanges.

29. Continental was registered with the Secretary of Agriculture as a Futures Commission Merchant during 1963.

30. a) Defendant Vogel was, in 1963, an Executive Vice-President of defendant Continental.

b) Michel Fribourg was, in 1963, President and Chairman of the Board of defendant Continental.

31. a) Defendant Continental in 1963, and since at least 1941, was registered in membership on defendant Exchange pursuant to the By-Laws of the Exchange.

b) Continental became a member of the Association on December 5, 1952.

32. Defendant Sidney Fashena ("Fashena") was, during 1963, a member of the Exchange, a member of the Board of Managers of the Exchange, Treasurer and a member of the Executive Committee of the Exchange. In 1963, he was on the Public Relations Committee and the Admissions Committee. Mr. Fashena served as a member of the Board of Managers from 1956 through to June 1965.

33. a) Defendant I. Usiskin & Co. ("Usiskin") was, in 1963, a partnership formed under the laws of the State of New York, engaged in a general commodities brokerage and commission business, with its office in New York City. Defendant Usiskin was, in 1963, registered as a member of the defendant Exchange pursuant to Section 69 of the By-Laws of the Exchange.

b) Usiskin became a member of the Association on October 8, 1947.

c) The partnership of I. Usiskin & Co. was dissolved in 1967 upon the death of Isidore Usiskin, one of the partners.

34. a) Defendant Fashena was, in 1963, a general partner of Usiskin.

b) There were only two partners in Usiskin: Mr. Usiskin, deceased since 1967, and Mr. Fashena.

c) In 1963, Mr. Usiskin served on the Cottonseed Products and Soybean Oil Committee.

35. Carl R. Berg ("Berg"), now deceased, was in 1963 the full-time Managing Director of the Exchange.

36. Solomon J. Weinstein ("Weinstein"), now deceased, was in 1963 the President of defendant Association and Chairman of its Board of Directors.

37. David L. Boyer ("Boyer") was from July 1, 1963 and during the balance of 1963 the full-time Manager of the Association.

38. Each of the following individuals was, in November 1963, a member of the Board of Managers of the Exchange, affiliated with the company listed next to his name:

Member of the Board of Managers	Company Affiliation
Milton Goldfogle	Independent floor broker
Thomas Gowdy	T. F. Gowdy & Co.
Wallace W. Hyde	Cargill, Incorporated
Otto F. Rehders	H. Hentz & Co.
Dirk D. VanLinschoten	Louis Dreyfus Corporation
Dominick R. Comenzo	D. R. Comenzo & Co., Inc.
Arthur V. Crofton	E. F. Hutton & Co., Inc.
Alexander Paterson	Ellerman's Wilson Line
Carl E. Preston	Independent floor broker
William B. Tucker	The Van Iderstine Co.

39. Dominick R. Comenzo, through his company, D. R. Comenzo & Co., Inc., acted as a broker for Allied in the commodities futures markets at various times prior to 1961.

40. a) Each of the following individuals, during 1963, was a director or officer of the Association and was affiliated with the Company listed next to his name:

Name	Position in the Association	Company
Solomon J. Weinstein	President-Director	Metropolitan Vegetable Oil Co., Inc.
Charles B. Vose	Vice-President-Director	Kohlmeyer & Co.
J. Antonio Zalduondo	Secretary-Treasurer-Director	Orvis Brothers & Co.
Perry E. Moore	Assistant Secretary-Treasurer-Director	Robert Moore & Co.
Sidney Tessler	Director	Bache & Co., Inc.
L. Hudson Leathers	Director	Hayden Stone, Inc.
Harry A. Zoeller	Director	H. Hentz & Co.

41. Contracts calling for a future delivery of domestically produced agricultural commodities are commonly known as "futures contracts." All purchases, sales and [illegible] of contracts calling for [illegible] future delivery of commodities were, in 1963, subject to the provisions of the Commodity Exchange Act ("Act") and the Regulations promulgated thereunder by the United States Secretary of Agriculture; and further, were subject to all of the By-Laws, Rules and Regulations of the Exchange not disapproved by the United States Secretary of Agriculture.

42. Pursuant to the Act, futures contracts for certain commodities including cottonseed oil in 1963 could only be bought and sold on an exchange which has been designated by the Secretary of Agriculture as a "contract market" and by or through a member thereof.

43. Contracts for future delivery made on the Exchange were subject to clearance in 1963 through the Association in accordance with the Charter, By-Laws, Rules and Regulations of the Association and, if such contracts were accepted by the Association for clearance, the Association thereupon became substituted on said contract as a seller to the buyer and as a buyer from the seller. The Association, in 1963, engaged in clearing contracts made on the Exchange for the purchase and sale of cottonseed oil for future delivery.

44. a) In 1963, cottonseed oil futures contracts made by members of the Exchange were cleared through the Association. The privilege of clearing contracts for future delivery made on the Exchange was limited to clearing members of the Association and only members of the Exchange or those enjoying the privileges of Exchange membership were entitled to become clearing members of the Association.

b) Said privilege might have been granted or denied by the Board of Directors of the Association to members of the Exchange who were stockholders of the Association, [illegible] stockholders of the Association [illegible] a partner who was a member of the Exchange, or corporations who were stockholders of the Association having an executive officer who was a member of the Exchange.

45. The Clearing Members of the Association in 1963 were:

Abbott, Proctor & Paine
Bache & Co.
Barnes, R. J. & Son, Inc.
Bear, Stearns & Co.
Cargill, Inc.
Coleman & Company
Comenzo, D. R. & Co. Inc.

Continental Grain Company
Dreyfus & Company
DuPont, Francis I. & Co.
Fahnestock & Co.
Goodbody & Co.
Ira Haupt & Co.
Hayden, Stone & Co., Incorporated
Healy, Leslie J. & Co.
Hentz, H. & Co.
Hirsch & Co.
Hutton, E. F. & Co., Inc.
Kohlmeyer & Co.
Laird, Bissell & Meeds
Loeb, Carl M., Rhoades & Co.
Merrill Lynch, Pierce, Fenner & Smith, Incorporated
Metropolitan Vegetable Oil Co., Inc.
Ooltewah Investment Co.
Orvis Brothers & Co.
Paine, Webber, Jackson & Curtis
Parry, John F.
Peters, Ralph N.
Peters, Ralph N. & Co.
Reynolds & Co.
Schweickart & Co.
Shearson, Hammill & Co.
Shields & Co.
Sirota, George
Sirota, Taylor & Co., Inc.
Stamm, A. L. & Co.
Sutro Bros. & Co.
Thomson & McKinnon
Usiskin, I. & Co.
Wagner, Julius
Walker & Company
Weis, Irving and Company
Williston, J. R. & Beane, Incorporated
Witter, Dean & Co.

46. Neither Allied nor [illegible] was [illegible] any member of the Association.

47. In 1963, pursuant to the By-Laws of the Association, members were required to deposit certain amounts of original margin with the Association on futures contracts which had been cleared through the Association by the clearing member and the clearing member was also required to maintain, from day to day, the value of such futures contracts. In the event of price declines, clearing members having outstanding "long" positions with the Association were required promptly to forward sums to the Association which sums were

distributed to clearing members having outstanding "short" positions with the Association. In the event of price advances, clearing members having outstanding short positions with the Association were required promptly to forward sums to the Association which sums were distributed to clearing members having outstanding long positions with the Association. Such daily payments required as a result of price fluctuations are known as "variation margins." In 1963, each clearing member was liable to the Association for margin payments on all futures contracts cleared by it through the Association.

48. Beginning in July, 1963, and continuing to and including November 20, 1963, Haupt acted as a broker for transactions in cottonseed oil futures contracts on the Exchange for Allied. The futures contracts executed on the Exchange by Haupt for Allied were cleared through the Association and by virtue of such clearance, Haupt became liable to the Association to maintain the value of the cottonseed oil futures contracts entered into by Haupt for Allied through the deposits with the Association of original and variation margin as described above.

49. In 1963, Norton Waterman ("Waterman") was a Managing Partner of Haupt.

50. Ira Haupt II was a general partner of Haupt until he withdrew from the firm in July, 1963. Mr. Haupt II's responsibilities during 1963 and prior to July, 1963 included the supervision of the Haupt Commodity Department.

51. Jack E. Stevens ("Stevens") was an employee of Haupt who supervised the Commodities Department subsequent to the departure of Haupt II.

52. Fred Barton ("Barton") was an employee in the Haupt Commodity Department and from mid-July 1963 on was under the supervision of Stevens. On September 27, 1963, Barton left Haupt because of a serious illness requiring surgery. He returned to Haupt on November 11, 1963.

53. During 1963, Edmund Beetz ("Beetz") and George Plave ("Plave") were co-cashiers at Haupt.

54. On Tuesday, November 19, 1963, Allied filed a petition in bankruptcy under Chapter XI of the Bankruptcy Act in the United States District Court for the District of New Jersey and, on December 6, 1963, Allied was adjudged bankrupt.

55. After the close of business on the Exchange on November 18, 1963, MacDonald, Berg, Anderson and Vogel spoke to each other on the telephone and, as a quorum of the Executive Committee, MacDonald, Anderson and Vogel imposed a 25-point limit on price fluctuations effective upon market opening on the next day.

56. a) The only warehouse receipts deliverable on the Exchange in satisfaction of cottonseed oil futures [illegible] by bonded warehouses registered by the Exchange.

b) When required to make delivery, persons holding short positions in cottonseed oil futures were required to tender such registered warehouse receipts in satisfaction of their obligation to deliver cottonseed oil under their futures contracts.

57. The warehouse receipts outstanding during November 1963 on the forms of American Express Warehousing, Ltd., pledged by Allied to Haupt as collateral for loans,

were forgeries. American Express Warehousing, Ltd. did not operate bonded warehouses registered by the Exchange.

58. The following are the dates of the meetings of the Board of Managers of the Exchange held during 1963:

February 7
March 7
April 4
May 16
June 6
August 1
October 3
November 14
November 20

59. The following is a list of meetings or discussions held by the Exchange, the Association, and various of their respective committees, members and officials during the period August 1963-November 1963:

a) There was a meeting of members of the Board of Directors of the Association on August 13, 1963.

b) There was a meeting of members of the Cottonseed Products and Soybean Oil Committee of the Exchange on August 28, 1963.

c) There was a meeting of members of the Cottonseed Products and Soybean Oil Committee of the Exchange on [illegible].

d) [illegible] of the Association and the Exchange on September 23, 1963.

e) There was a meeting of members of the Board of Directors of the Association on October 8, 1963.

f) There was a meeting of members of the Board of Managers of the Exchange on November 14, 1963.

g) There was a meeting of members of the Executive Committee of the Exchange on the morning of November 19, 1963.

h) There was a meeting of members of the Board of Directors of the Association held in the Board Room of the Exchange on November 19, 1963 at 10:30 A.M.

i) There was a meeting of members of the Executive Committee of the Exchange and a meeting of members of the Board of Directors of the Association, held in the Board Room of the Exchange on November 19, 1963 at or about 4:00 P.M.

60. Not every member of the above-mentioned bodies attended every meeting identified in paragraphs 58 and 59.

Defendants' Request to Char[illegible] 83)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

CHARLES SELIGSON, as Trustee in Bankruptcy of IRA HAUPT & CO., a Limited Partnership, Bankrupt,	:	REQUEST TO CHARGE OF THE DEFENDANTS NEW YORK PRODUCE EXCHANGE; DONALD V. MacDONALD; HARRY B. ANDERSON; MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED; WALTER C. KLEIN; BUNGE CORPORATION; HAROLD H. VOGEL; and CONTINENTAL GRAIN COMPANY.
Plaintiff,	:	
-against-	:	
NEW YORK PRODUCE EXCHANGE, et al.,	:	
Defendants.	:	

- x 66 Civ. 1016 (RLC)

DEFENDANTS' REQUESTS FOR
JURY INSTRUCTIONS

Defendants hereby submit requests for instructions to be given to the jury at the close of the trial on the issue of liability.

Defendants do not waive their right to submit revised or additional requests in response to plaintiff's requests or based upon evidence admitted at trial. Specifically, since the theory underlying plaintiff's antitrust claim remains imprecise, defendants may seek to submit additional requests after reviewing the requests submitted by plaintiff.

Although defendants have tried to anticipate the nature of the proof as far as possible, they also respectfully reserve their rights to offer evidence on matters not covered by the following requests.

- -

Court's Instructions on the Law To Be Followed

Ladies and Gentlemen of the Jury -

1. You have been chosen and sworn as jurors in this

63. In determining whether or not the Exchange or a director or directors abused their discretion, you must give great weight to the action or inaction of the CEA. You must be very hesitant in returning a verdict against the defendants if you find that the CEA knew of the condition of the cottonseed oil futures market and at the time it gained this knowledge took no action concerning that market.

Exchange Buffet Corp. v. New York Stock Exchange, 244 F.2d 507, 510 (2d Cir. 1957);

Crimmins v. American Stock Exchange, Inc., 340 F. Supp. 1250, 1261 (S.D.N.Y. 1972);

Securities and Exchange Commission v. Sonn et al., (S.D.N.Y. 1975) (unpublished opinion).

See also,

San Francisco Mining Exchange v. Securities and Exchange Commission, 378 F.2d 162 (9th Cir. 1967).

else

the stand and says here is what should be done, they are going to turn to the jury and say that is nice for the fellow sitting in Stanford --

THE COURT: The objection to those documents is sustained. That is 44 through 54. In the event that the defendants raise that defense, then that will raise the question as to whether you can meet it. But you are not going to be able to introduce those documents on your case in chief.

MR. HARRIS: Before we leave them, there are two documents in there that are somewhat different. Item No. 50, which is a letter from Mr. Lebeck, Secretary of the Board of Trade to all the members of the Board of Trade, is a letter pointing out that Mr. DeAngelis was suspended from membership of the Board of Trade for a period of time. A lot of companies were on the Board of Trade. I would like to use that document to attempt to prove that Mr. DeAngelis had gotten himself in trouble with the Chicago Board of Trade and they should have attempted to find out what happened, and they never even tried to do that. It turns out he was suspended for fictitious trading, which is a market factor that they should have known.

THE COURT: If any letters, in terms of 50

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A Yes. I'm a member ofthe American Economic Association and the American Agriculture Economic Association.

Q Are you able to explain to us today the manner in which commodity futures trading occurs and the manner in which the commodity futures market operates?

A Yes.

Q Would you please begin by explaining what are the essential features of a commodity futures contract?

A A commodities futures contract is an agreement between two people to exchange some item in the future or some commodity in the future.

May Iwrite on the blackboard?

MR. BERNFELD: Your Honor?

THE COURT: All right.

MR. BERNFELD: Thank you.

A I might just list the essential features of a futures market contract.

One is quantity. Each contract has a specific quantity of a commodity that's specified.

There's a specific quality of a commodity that's specified in the contract.

There will be a specific time at which this exchange is to occur within the future.

cash commodity is.

MR. BERNFELD: By all means.

Q Would you begin by explaining what a cash commodity is?

A A commodity is anything we buy and sell. A cash commodity is anything we buy and sell for cash, for money today.

So if you go to the drugstore and buy tooth-paste, that becomes a cash commodity. You paid cash for that item.

Q How does the futures contract differ from the cash contract calling for delivery of cash commodity, let us say, next week?

A We have examples in our everyday life of contracts for cash commodity. Probably the most common, that most people are familiar with, is when you buy a house, often you sign a cash contract for some delivery in the future. Maybe you take over the house 15 days hence. Or when you go and buy a new car, the dealer won't have the kind of car, the color, the type of wheels and that sort of thing in stock. So you may sign a contract for delivery of that car next week, something like that.

The futures contracts are really -- there's a lot of similarity between them.

The prime difference is the futures contracts are -- they are interchangeable. We can interchange one contract with another. If you have a contract with a car dealer, it's a unique contract. There's really only one. They aretraded on organized exchanges, whereas a cash, foreard cash contract, you wouldn't turn around and sell to somebody else.

merchandising vegetable oil. The crushers, refiners, feed producers, etc.

Q What is the nature of their interest in using the futures market?

A Primarily they are interested because the prices of the vegetable oil fluctuates daily, they are interested in reducing the price risks that are involved with these commodities.

Q What causes price risk in vegetable oil?

MR. O'DONNELL: I object to that as repetitious, your Honor. We have been over that.

MR. BERN: I don't believe that is the case, your Honor.

THE COURT: I will overrule the objection. You may answer.

A Price risks are caused because the prices are fluctuating up and down every day. It becomes difficult for businessmen to make their decisions that they have to make when prices are fluctuating as opposed to when they are constant.

Q How can futures contracts be used to reduce price risk?

A Futures contracts are used to reduce price risks by the merchants who are handling the particular

commodity, buying and selling these contracts forward in time. It allows them to fix a price for a commodity that they are selling or fix a price for some input that they are going to buy and use in their processing.

Q Could you give us an example of how a seller of cash vegetable oil can remove some price risk by buying or selling futures contracts?

A Sure. A typical example of a seller would be let's say a refiner who has a storage tank full of oil, and our agricultural commodities are seasonal, so they have to be stored. Demand is year round so they have to be stored.

Somebody is involved with storing this particular commodity so if he has a tank full of oil, he is concerned, let's say he is going to store it three months, concerned that the price may decline while he is holding it.

So to protect himself against a potential price decline, what he does is sell that amount of oil forward by selling a futures contract, and that will in essence help him fix a price at some future point in time for the sale of that commodity.

Q How about an example of a buyer?

elr Leuthold-direct [201]

A A buyer could be let's say an exporter. We export a lot of our vegetable oil, so an exporter may sign a contract with a foreign country, you want to sell to a foreign country let's say three months hence. The exporter knows he is going to have to buy this cash oil three months from now, and if he has no storage facilities he is concerned that in the three months of time, that the price might go up.

So he is intersted in minimizing or reducing this risk that the price might go up in the interim. So he can buy a futures contract and accept delivery on that futures contract and the price is then stipulated.

(In open court, jury present.)

BY MR. BERNFELD:

Q Mr. Leuthold, are you familiar with the manner in which cottonseed oil futures contracts were traded on the New York Produce Exchange in 1963?

A Yes.

Q Can you tell us how you have become familiar with this?

A In general I have become familiar with futures markets in my teaching, and the mechanical operations of most commodity markets are quite similar. With respect to the New York Produce Exchange in 1963, I have reviewed the appropriate bylaws and trading rules.

Q In 1963 if an individual or a company wished to buy futures contracts on the New York Produce Exchange, how would they have gone about doing that?

A They could have called their broker.

Q Could you illustrate for us the manner in which trading would have taken place on the Produce Exchange in 1963?

A May I use the blackboard?

MR. BERNFELD: I think that would be helfpul, your Honor.

A Trading took place by some individual starting

by calling -- we use the word general broker as a general term -- for securities. But actually in commodities we talk about the futures commission merchant or the registered representative. You would call him as you would -- if you wanted to buy stock, you would say you wanted to buy a contrace of some commodity.

He would then rely that order to the Exchange, to somebody operating a telephone at the Exchange. That person would write the message down on a piece of paper, hand it to a messenger, the messenger would carry it to what we call the trading pit.

The trading pits in general for commodity exchanges are sort of six sided affairs. Some of them are eight sided. It is in these pits where the brokers who trade stand.

These pits have stairs going down into the middle of them, three or four stairs, such that they are a pit. There is a well in the center.

THE COURT: We are talking about the New York Produce Exchange in 1963.

THE WITNESS: To the best of my knowledge, yes.

Q Professor, have you ever had the opportunity to examine vegetable oil futures contracts being traded?

which delivery would occur or the Exchange -- remember, the contracts initially are nothing more than a promise to the Exchange. The contract month is the time at which the actual commodity would exchange hands.

Q It is a stipulated fact in this case that cottonseed oil futures were traded on the Produce Exchange in 1963.

Can you tell us how many different contract months there were traded on the Produce Exchange during that year?

A Yes. Let me list them. There was March, May, July, September, October and December. Six months.

Q Professor, does that mean that no trading could take place on the Produce Exchange during the months and the year that you do not list?

A No, these are the months which delivery occurs. Trading takes place on these contracts every day the Exchange is open. These months refer to the day the contract matures or -- excuse me -- the time period, the month at which the contract matures. Trading can occur every day.

THE COURT: If I have a contract to buy and I buy the futures, as you indicated, if it is set for delivery in December, that is what you call the trading month.

Q Is there any special name attached to those people who buy futures contracts?

A Yes, they are called longs. People who buy we call long. They go long in the market.

Q What name has the trade given to people who sell futures contracts?

A We call them shorts. People who sell contracts we say they go short or they are shorts.

Q I believe in essence earlier you indicated, Professor, that some people use the futures market as an aid in conducting their business.

In 1963 how would buyers or sellers generally use the cottonseed futures trading market as an aid in conducting their business?

A Well, if you were in 1963, you had a storage tank of oil, of cash oil, what you would do would be to sell a futures contract for some future point in time.

So you would be short in the futures market by the amount that you have sold.

Often there was a parallel between the amount which you own and the amount that you would sell forward in time.

Similarly, you could be a buyer -- again an example of the exporter which I gave previously -- you

could be a buyer. Let's say you are going to export overseas a shipload of oil three months hence. So you would buy a contract that would deliver three months hence if one existed. You could accept delivery, put that oil on the ship and send it overseas.

Q Does the futures market have a special name for people who buy or sell futures contracts in connection with their business involving the cash commodity?

A Yes. We call them hedgers, somebody who buys and sells with regard to their -- what their cash position is or their activity in the cash market. If they enter the futures market currently, we call them hedgers.

Q What is meant by the word hedge?

A A hedge is a system of protection. Sometimes we think of insurance as a hedge against loss, but within the futures market hedge is used here as a protection against price fluctuations, protection against the price moving against you.

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Q We heard the expression used I be e during one of the introductory remarks, hedg. g your bet. Is this similar to he ing your bet?

A Yes. It could be, yes.

THE COURT: You talk about a hedger. You hedge when you have both a long and short position; is that what it is?

THE WITNESS: But your positions -- one would be in the cash market and one would be in the futures market.

THE COURT: I see.

THE WITNESS: So if you own cash oil, we say that you are long in the cash market. You would seell it through the futures market. You are short in the futures market.

If you are an exporter and you are going to buy cash oil sometime in the future, that means you don't have any right now so you are short of cash oil. So you buy that futures contract forward. You are going to buy that oil three months from now. So you go long in the futures market.

Q This is a difficult concept to understand, I believe. Perhaps if you could give us an example of more common parlance, something along the lines of hedging your bet, maybe we could picture it a little more graphically.

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or a little more clearly.

MR. O'DONNELL: Your Honor, I object to the form of the question.

THE COURT: The objection is sustained.

MR. BERNFELD: Let me rephrase it.

Q Professor, let us return to the concept of hedging one's bet.

I would appreciate it if you could give us an example of how that would work.

MR. LIMAN: Objection to hedging the bet, your Honor.

THE COURT: The objection is sustained.

Are you going to use the blackboard, Professor? If not, I would suggest that you return to the witness stand.

Q Professor, you talked about both longs and shorts using the futures market for hedging.

Could you give us an example of how a long in 1963 would use the futures market for hedging?

A Could I use numbers?

Q Sure. Go ahead, Professor.

A What you are concerned about -- if you are holding a tank full of oil, of vegetable oil, and let's say that it's worth 20 cents, and you are in the business of

storing this oil, you are concerned about -- and you are going to store it for three months -- you are concerned about the value of that oil going down. These prices go up and down. You are concerned about the value of that oil going down in the interim, while you are holding it.

So what a hedger does is he's long in cash oil, he wants to offset this risk of the price of this oil going down while he's holding it.

So he may pick a futures contract, for example, that may mature for let's say three months hence. Let's pick the December contract. And let's say that he knows that the December contract is selling for 22 cents. He could then immediately sell his cash oil or sell a contract, futures contract, go short in the futures market, sell his cash oil through the futures market for 22 cents. Remember what this is, this is a promise for him to deliver cash oil in December for 22 cents.

He's hedged himself in the sense that he no longer has his risk of the price falling to 18 cents or 15 cents. He could sell and deliver on the futures market for 22 cents in December. So that's a short hedge.

Q That is a short hedge.

Could you give us an example of a long hedge?

A It would be just the opposite side of this

case, where again we could use 20 cents. Let me pick a higher number.

Let's say that an exporter today signed a contract to ship a shipload of oil to West Germany, some foreign country. Let's say he signed a contract for 23 cents, but he has no storage facilities, all he has is an office with some telephones in it. He's going to deliver it in December.

He's concerned about in December he's got to go out and buy that cash oil, put it on a ship and send it over there. He's concerned about having to pay more than 23 cents.

So if he looks at the futures market and he may see again the futures price for December selling at 22 cents, he can buy the cash -- he can buy a December contract, accept delivery. He, in essence, then has paid this 22 cents, ships it overseas, gets his 23 cents.

He has avoided the risk, the price risk of this price increasing while he's waiting to buy.

Q Does anyone else use the futures market to buy and sell futures contracts other than hedgers?

A Speculators.

Q What is a speculator?

A A speculator is one who buys or sells a

futures contract in the hopes of making money as the price moves up or down.

Q Would there have been both hedgers and speculators trading on the New York Produce Exchange in '63?

A Oh, of course. You need both to make the market work.

Q Why would a person in 1963 be interested in speculating on the futures market?

A Well, he would be speculating in hopes of making money. If the speculator thought, for example, that the price was going to go up, he, of course, would buy a futures contract with hopes of selling it back later at a higher price, or if he thought the price was going to go down, he would sell a futures contract and hope to buy it back at a later point in time.

What he's doing, of course, is absorbing this risk that the hedger wants to pass on.

Q If a speculator can be sure that price will move in a profitable direction in 1963 on the produce exchange, why wouldn't hedgers want to keep that profit for themselves?

MR. FRYER: Your Honor, I object to that question.

THE COURT: Objection sustained.

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Q Would it be usual in 1963 for commodities prices to fluctuate,move up or down?

A Yes.

MR. LIMAN: Objection to this.

THE COURT: Go ahead. The question has been answered.

Q In 1963, do youknow whether commodity prices generally moved up or down dramatically?

MR. LIMAN: Objection to the question "drmaatically."

THE COURT: The objection as to form is sustained.

Q Professor, do youhave an opinion whether in 1963 there was price movement in commodity futures which involved cottonseed oil trading?

A Yes, prices did move.

Q Was the New York Produce Exchange an active market in 1963?

A Yes, in terms of the contracts that were traded, the volume of contracts.

Q How would one have been measuring volume of contracts traded on the produce exchange in 1963?

A Volume of contracts is nothing more than the number that are bought and sold in a given period of time.

Normally we look, every day we want to know what the volume is in a specific day, so this will be reported in the newspapers to see how many contracts are bought and sold every day.

Q Who kept track of trading volume in cottonseed oil futures in 1963?

A Well, the New York Produce Exchange would have had to.

Q In 1963 was there a way to measure the number of contracts which various traders held on a given day or week or month?

A Yes, he could look at the number of contracts one was holding. We use the term open interest for that. Open interest refers to the number of contracts that you hold at the end of the day or for the market as a whole, it's the number of outstanding contracts at the end of the day.

So one has -- one looking, one has to be careful. A common problem students have is, remember for every futures contract there has to be a buyer and seller or otherwise there is no contract. You have a buyer and a seller and you have one long and you have one short for every contract.

So to find the open interest you either add

Why don't you talk about specific numbers. Could you give us an example of how much it would cost to buy or sell a contract?

A As a general rule on all futures markets contracts are bought and sold on what we call on the margin. The margin is generally around 10 per cent of the value fo the contract. This can vary somewhat, but for example, in 1963, the contracts were 60,000 pounds, let's say a contract was worth 10 cents. If it was worth 10 cents the total value of the contract would be $6000.

But if you wanted to buy a contract you wouldn't have to put up $6000. In 1963, although the rules vary depending on the price, it was normal to putup about $500 to buy or sell a futures contract.

Q You indicated that there might be some change in the amount that one would have to put up as margin. Why would that be?

A Well, the exchanges can change the rules. It's up to them as to what the margin is. They may change the rules depending on the price or they can change the over-time. Of course, it varies among commodities, depending on the total value of the contract.

Q In the opening statements which the jury

heard, we heard the term used, ridge margin.

In 1963 what wasmeant by the term ridge margin as used to the New York Produce Exchange?

A The ridge margin between any customer and his broker, let's call him, that would be the amount that, when you said that you wanted to buy a futures contract, that is in essence the amount that you give your broker to make that transaction. Whether he is buying or selling.

Q What would the exchange broker in 1963 do with this ridge margin deposit?

A He'd have to put it into an approved bank account; it has to be segregated account, segregated from other operations, but he could put all his futures commissions money into one account.

Q We have also heard reference in the opening statement to the term New York Produce Exchange Clearing Association.

Do you know what function the New York Produce Exchange Clearing Association served in 1963?

A It serves the function that -- we have clearing associations today too. The exchange just -- the basic thing the exchange does is provide the facilities for providing, this which I drew up here and the

telephone operations, etc.

The clearing association that is associated with the exchange more or less acts as the accountant and the broker -- or the accountant and the banker for the money transactions that are going on. They obviously go very closely together. They have to work together very closely.

Q In 1963 who would become a member of the New York Produce Exchange Clearing Assoc ation?

MR. LIMAN: Objection to the form of that question.

THE COURT: The objection is sustained.

Q Professor, do you have an opinion whether in 1963 members of the New York Produce Exchange would have had a reason to join the New York Produce Exchange Clearing Association?

MR. O'DONNELL: Objection, your Honor. No foundation.

THE COURT: Objection sustained.

Q Preliminarily, Professor, as a general matter, who joins a clearing house?

MR. O'DONNELL: Are you speaking now of 1963 or 1975? I objecc, your Honor.

MR. BERNFELD: We are speaking with respect

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THE COURT: The questions being asked so far are questions that I think there is no dispute about. There was original margin required and variation margin, et cetera. I thought that maybe you were going to ask him what that margin was. In any event -- is there any dispute about that on your part, Mr. O'Donnell?

MR. O'DONNELL: No, your Honor.

MR. MINNEROP: None whatsoever.

MR. O'DONNELL: There was a margin requirement in the bylaws; we have the bylaws here. Same margin that the Clearing Association had, didn't apply to hedgers. It is not a simple yes or no, but the bylaws make the provision.

MR. LIMAN: This young man is only testifying based on what he is reading in the same documents.

MR. BERNFELD: I would object to Mr. Liman testifying, your Honor.

THE COURT: That objection is sustained, Mr. Bernfeld. Only the witnesses testify, Mr. Liman.

Q Professor Leuthold, could you tell us how the Clearing Association worked in 1963?

A The Clearing Association in essence became a party to every contract. It became, it in essence became a long to all the shorts and a short to all the longs. What it was there for was to match the trade. You had buyers and

sellers in the pits so they would fill out their slips and paper and these would go back through the Clearing Association; the Clearing Association would match these trades, the Clearing Association would then ask the clearing member for this original margin money that was needed. Then as you held your position the value of your contract went up and down. If the value went down, the Clearing Association would ask the clearing member for what we call variation margin, the amount of money, in essence, that the value of this contract went down.

He would pass that money on to the person who is holding the other side of the contract, for who the value of the contract had gone up. So he is performing here the accounting function of just matching orders, but also the banking function of settling the prices at the end of every day and evening everybody's accounts out and passing money from those for whose value the contracts had gone down to those who are holding contracts that their value had gone up.

THE COURT: I think that that is an area in which a concrete explanation might be helpful to the jury. Not just in terms of contracts, but in terms of longs and shorts or buyers and sellers, so we can understand that.

A Let's say you have two people who just entered into a contract, so you have a long who buys, let's say at 20 cents a contract or December delivery; a short sells this same contract for 20 cents.

You remember, you need a buyer and a seller to make this contract. They each put up let's say $500 original margin, or something in that neighborhood, whatever the Exchange was requiring.

Now, the clearing house now matches two orders and the clearing house would require this original margin to be in a specific account. Let's say that one day later, just for our arithmetic, let's say that one day later, that the value of these contracts went to 21 cents; the value of the December contract went to 21 cents. It moved a penny. A penny a pound. So a penny times 60,000 pounds would be $600. There would be a change in the value of these contracts by $600.

Who is in essence $600 richer? Of course, the person who had bought. The value of his contract had gone up one cent or $600. The person who had sold now, the value of his contract has gone down $600.

So the clearing house could require from the clearing member, could require to put up the variation margin of $600. So the clearing house would in essence

take the $600 check from clearing member who was representing a customer who was short, put it in an account, turn around and write a check to this person who was long for $600.

In essence transfer the money from the short to the long.

Just the opposite is the case if the value had gone down, say to 19 cents, the person who was long or holding this contract, who wanted to accept delivery, the value of his contract went down $600.

The person who was selling in the future the value of his contract just increased $600. So the Clearing Association would go through the opposite procedure of getting $600 from this long and in essence through the banking procedure pass this money on to the person on the short.

Q In 1963, Professor Leuthold, how did parties to a futures contract for cottonseed oil bring that contract to a conclusion?

A Contracts are terminated two ways. Either by offsetting them or by accepting or giving delivery. Offsetting, I mea that if you were long, if I bought a contract today I'm long, I might sell it tomorrow. I have offset it, I am out of the market. Or I might sell today,buy tomorrow, I have terminated that contract. The

Q You mentioned that there was a second way in which contracts could come to conclusion.

Could you describe that for us?

A Well, the second way is by letting the contract go to maturity and accepting or giving delivery. If you are long, that means, of course, you promise to buy into the future. You will accept delivery of the contract of the cottonseed oil. If you were short, that means that you have promised to deliver it at this point in time in the future.

Q In 1963 if delivery occurred on the New York Produce Exchange, did one party to the contract have to give any money to the other party to the contract?

A Of course when delivery occurs, the person who has just bought has to put up the cash for the full value of that contract.

Q As a general proposition, Professor, can you tell us whether contracts are settled by delivery?

A No, not generally.

Q What is the predominant method of settling a contract?

A Most of the time they are offset. Today two per cent are settled by delivery or something in that neighborhood.

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Q What type of traders in 1963 would have been more likely to either make or to accept delivery on a cottonseed oil futures contract when such deliveries did occur?

A Of course the people who are going to accept delivery or give delivery are your hedgers primarily. They have the facilities for doing that. They handle the cash commodity. Most speculators generally do not accept or give delivery because they don't have the facilities. They offset their positions.

Q In 1963 was the New York Produce Exchange a cash market for cottonseed oil as well as a futures market?

A No.

Q Is there today an organized central cash market for any vegetable oil?

A No.

Q Are there organized central cash markets for other commodities?

A Yes, there have been organized central markets for grains.

Q Where in 1963 would commercial interests have gone to buy cash vegetable oil?

A You probably would have to go to the refiner,

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to the person who was storing it.

Q Would a company who stored vegetable oil in 1963 have any reason to prefer to accept delivery on a futures contract rather than buying on the cash market?

MR. O'DONNELL: Objection as hypothetical.

THE COURT: I am going to have to sustain that objection. I just can't see where we are going at this point.

MR. BERNFELD: Let me go on to the next question, your Honor.

Q Was there a relationship, Professor, between futures prices and cash prices for cottonseed oil in 1963?

A Yes. Futures prices and cash prices tend to move up and down together.

In general we expect the price relationship to exist, to show the costs of storage, insurance, so forth.

The general relationship is that futures prices are above cash prices by the amount that it is costing somebody to store it over a given period of time.

The cash and the futures prices will gradually come together as you get into delivery. As you get towards delivery, of course your storage costs become less and less. Your storage costs from October to December are more than from November to December. So the cash and

futures prices will tend to come together at delivery time, but general market forces will cause them both to move up and down in concert.

Q Do you have an opinion whether it would be unusual for futures prices to be significantly higher than cash prices during the delivery period on a futures contract?

MR. O'DONNELL: Objection, your Honor.

THE COURT: I don't think that you are in a position to ask Dr. Leuthold any opinion because you haven't laid any foundation for it.

MR. BERNFELD: I will go on to the next question, your Honor.

Q Can you explain to us, Professor Leuthold, whether cash prices and futures prices diverge at some point in time during the delivery period on a futures contract?

MR. O'DONNELL: I object to that question, your Honor. I don't understand it. I think perhaps it has already been asked.

MR. BERNFELD: I know I haven't already asked it, your Honor.

THE COURT: As I understand him, he has explained to us that there was a relationship between them, and that as you came closer to delivery, that was the time when they

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tended to become more or less the same. He said the relationship was the cost of storage. As you approach the point of delivery, then the cash price and the futures price seem to come together.

I don't understand where we are.

MR. BERNFELD: I will go on to the next question, your Honor.

Q In 1963, Professor, was there a procedure which the Produce Exchange used to determine which person holding a long position in a given contract month which was maturing had to accept delivery under a futures contract?

A First of all, on delivery the seller has the option -- the seller tells the clearing house that I'm going to deliver through an appropriate means of communication.

The clearing house in essence finds the person who has been holding a long position for the longest period of time or the person who has been saying I'll accept delivery for the longest period of time.

Q In 1963 did a trader holding a long position as a contract month matured have to accept delivery?

A No. He could -- he had a short period of time, 40 minutes, I believe, in which he could turn around and sell that -- sell his long position on the futures market. Then the Association had to find the person with

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the next longest position.

Q In 1963 would a trader of futures contracts who stood for delivery on the Produce Exchange have received the actual cash oil?

A No. He doesn't receive the actual cash oil, he will receive a warehouse receipt.

Q Would he receive any particular type of warehouse receipt?

A A registered warehouse receipt.

This means -- let me define if I can a warehouse receipt. A warehouse receipt is a document issued by a storage company showing that oil exists and that somebody owns it. So it is an item of title. If it is a registered warehouse receipt, all that means is that that storage tank has been licensed by the Exchange to hold vegetable oil.

Q Earlier, Professor, you described the manner in which the trading of cottonseed oil futures contracts took place in the trading pit.

Do you know whether in 1963 there were any exceptions to the general rule that trading take place in the pit?

MR. LIMAN: Is this the Produce Exchange?

MR. BERNFELD: For the New York Produce Exchange

in 1963.

A Yes, there were what are called ex-pit trades that were allowed on a limited basis. Ex-pit trades were allowed in two cases.

One is if a buyer and seller had -- were exchanging cash oil, they might do this, for example. like in their offices outside the trading floor. Where there might have been a trade of cash oil, they may exchange futures contracts to offset this trade of cash oil.

The other case was if a customer transferred from one commission house -- his account from one commission house to another commission house, this was done off the floor. The trades didn't have to go back through the Exchange.

Q Do you know whether in 1963 the New York Produce Exchange had to be notified when an ex-pit transaction in cottonseed oil futures contracts took place?

A Yes. A letter had to be written to the Exchange and then the prices were posted on the Exchange floor.

Q Were these prices as posted on the Exchange floor available to all members of the Exchange?

A Yes. They were public knowledge.

Q Professor, are you familiar generally with the use of warehouse receipts in the commodities business?

A Yes.

Q Up until the past year you had no work that you did with respect to cottonseed oil futures markets specifically, is that right?

A That's right, not that market. I had done work in other markets.

Q Yes, I appreciate that. I am just speaking of cottonseed oil.

Your first work of any kind with it was last year?

A Yes, sir.

Q How did you come to be doing work with respect to that market last year? Did you get retained by these people at the front table?

A Yes, sir.

Q Did they ask you to read the charter and bylaws and regulations of the New York Produce Exchange as it existed in 1963?

A Yes, sir.

Q Did you read anything else about the New York Produce Exchange as it existed in 1963 besides those three documents?

A I have read the book by Norman Mailer, the Great Salad Oil Swindle, which explains the situation somewhat at that time.

Q He is a novelist, isn't he?

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A Yes. He was a reporter --

MR. BERNFELD: Objection, your Honor.

A -- for the Wall Street Journal at one time.

Q The Great Salad Oil Swindle was written by him as a novel; was it not?

MR. BERNFELD: Objection.

Q A novel based upon events to some extent, fiction as to other events?

THE COURT: I --

MR. BERNFELD: Objection, your Honor. It is a well known fact which your Honor can take judicial notice of that Norman Mailer was not a novelist but a Pulitzer Prize winner --

THE COURT: Mr. Bernfeld, in the future don't overtalk me, please.

MR. BERNFELD: I'm sorry, your Honor.

THE COURT: The objection is overruled. You may obviously bring that out on redirect.

Q Will you please answer the question.

A Would you repeat it.

Q Yes.

The Great Salad Oil Swindle book that you read by Mr. Mailer you recognized as a piece of fiction based upon some of the events that related to the cottonseed

oil market back in 1963; did you not?

A I have no means of judging whether it is fiction or not. It described a situation that existed at that time.

Q You had no basis for drawing any conclusions as to the accuracy of what was said in the book at all based upon any personal knowledge of your own, did you?

A No. Before I read that book I had no real knowledge of the market.

Q Who was the swindler in that book? Was that Mr. DeAngelis?

A Yes.

Q Did you see anything in that book about the New York Produce Exchange being a swindler of any kind?

A I don't believe those words were used that I recall.

Q You spoke to us about the Clearing Association and you gave us the benefit very clearly of how the Clearing Association worked with respect to its members, and you gave us the example there of the price for a pound of cotton-seed oil changing from 20 cents to 21 cents or to 19 cents and depending which way the one cent went, the Clearing Association paid to the member on the one contract, if the price were ten cents a pound, $600. Do you recall that?

A Yes, sir.

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Q Yes.

Q In the past year did it come to your attention in the work that you have done with the New York Produce Exchange as it existed back in 1963, did it come to your attention that the trading positions of individual traders in cottonseed oil at that time was a very confidential piece of information?

A No.

Q That did not come to your attention?

A No.

Q Did it come to your attention that during 1963 in the cottonseed oil market the position of individual traders was well known to all of the members trading or generally known to the trading membership of the New York Produce Exchange?

MR. BERNFELD: Your Honor, may I object. I believe the question is compound.

Q Would you answer that, sir?

THE COURT: Do you understand the question?

THE WITNESS: I think I do.

THE COURT: All right. I thought I understood the question, so the objection is overruled.

A To the best of my knowledge the United States Government, the Commodities Exchange Authority would know

the position of various traders.

Q The Commodity Exchange Authority would know?

A Yes, sir. But beyond that, I'm not aware of who would or who would not have known.

Q With respect to cottonseed oil, and the months that you gave us there for the various delivery dates, can you tell us what portion of the calendar year cottonseed oil would be more plentiful, if there was any such period of time, over some other period of time during the course of the year?

A Well, cotton is harvested in the fall, so consequently more oil would be available in the fall than later on in the year, as we consume that given supply of oil that we had, presuming of course that the crushers were continuing to manufacture oil. But there is a seasonality to it.

Q So that the most plentiful time for oil is the fall of the year, is that your testimony?

A It would be the general case, yes.

Q In your work in the past year, in the course of that work, did it come to your attention as to whether or not there was a lot of publication of agricultural events taking place during the fall of 1963?

A The United States Department of Agriculture

closest, in that sense, to the customer; it's his customer, right?

A Yes, sir.

Q Have you ever heard the rule or principle, "Know your customer"? Is that a term that is familiar to you?

A Yes, sir.

Q What does the term, "Know your customer" mean to you?

A That you would know the -- primarily, you would be familiar with the customer's financial affairs, I'm sure that that is generally the intent of that statement.

Q And that intent of knowing your customer is so that the broker may protect himself from financial risk with respect to the transactions of the customer, is it not?

A Yes.

Q With respect tothis subject of martin that you talked about yesterday and the clearing association, are you aware, Mr. Leuthold, that with respect to margins the clearing association sets the margin that it requires the member of the clearing association to furnish the clearing association, the earnest money, as you called it, on each transaction?

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2B

grl Leuthold-cross

Q If they did nothing in the cash market and if they were growing cotton or crushing seed or refining the oil so that it was not yet in a state where they could sell it in the cash market, then they would be unhedged?

A I'm presuming when you refer to the New York Produce Exchange being closed that that means that all the contracts that were being held were going to be cancelled.

Q Yes, sir.

A Okay.

Q Yes, sir, I am.

A Okay.

Q So then they would be unhedged in the example I gave, would they not?

A Yes,sir.

Q How many instances do you know of exchanges closing under the conditions that the New York Produce Exchange closed on November 20, 1963 where contracts were terminated without delivery and a price set for the settlement of those contracts?

A Off the top of my head, I can't think of any other case other than the one we were referring to.

Q All right.

You mentioned, I believe, that you were a

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elrf 4 Leuthold-cross

arrangement with somebody else and they would trade at some price.

Q Do you know whether it would be possible for him to arrange to license additional tanks or additional storage facilities in order to satisfy the delivery requirement?

A My only familiarity with that is if somebody wants to license their warehouse or their storage tank, that they apply to the Exchange. An appropriate committee takes that under consideration. In 1963 I have no idea what the time lag would be involved from the time of application until the time of licensing.

Q You testified about possible exports having an effect on prices.

Could the possibility of exports also have an effect upon the open interest?

A It is a potential, yes.

Q What kind of an effect could it have?

A It is potential that if exporters were anticipating exporting into the future, that they may want to enter the futures market in anticipation of this, and so if they did that, it would tend to increase the size of the open interest.

MR. FRYER: I have no further questions.

will even permit exports in large quantities to take place?

A In the present situation, yes, the Government is having some control on that.

Q Are you aware from your studies in connection with this case that there were commentaries in the fall of 1963 that the Soviet Union might be in the market for vegetable oil in the United States?

A I am aware that there were possibilities of exports to Russia.

Q In fact, in the fall of 1963 Russia bought grain in the United States for the first time since the war, since World War 2? Don't you know that?

A I'm not aware it was the first time, but, yes, they were buying wheat.

Q And that this was a major policy decision by President Kennedy to permit that sale to take place?

A It would be a major policy decision.

Q And that that purchase of wheat in 1963 had an effect on all of the commodities markets? Are you aware of that?

A Yes.

Q And it stimulated expectation and rumor that Russia might be buying other things; am I correct?

A Of course.

gwrf 7 Leuthold-cross [322]

Q And you would have expected, am I correct, that that type of expectation would have a legitimate affect on price, volume and open interest?

A Yes.

Q You were asked by one of the other counsel about the margin requirements in 1963 for hedgers. Do you remember that?

A Yes, sir.

Q Your recollection of reading the rules is that if a customer was a hedger, the Clearing Association did not require original margin? Is that what your understanding was?

MR. BERNFELD: Objection, your Honor.

MR. LIMAN: I will withdraw the question.

Q What was your understanding of the margin requirements where an account was a hedged account?

A If a person was a hedger, my understanding is that the hedger did not have to put up original margin to his brokerage house.

Q Therefore, the brokerage house would have to put up the original margin with the Clearing Association; am I correct?

A Under the rules, yes, the brokerage house had to put up margin with the clearing house in all cases, hedging or speculation.

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4B

grl Leuthold-cross

Q Are there risks for a brokerage house if it accepts product margin which don't exist if it accepts cash margin?

A I'm not sure I understand the question.

Q Let's assume that a customer is buying contracts, so it's long, and let's assume that the brokerage house accepts product margin from that customer rather than cash.

Is the brokerage house in a more exposed position than if it insisted on cash?

A Yes. If the amounts were the same, the dollar values were the same.

Q Let's explain that.

If the price fell on the futures market, the brokerage house would have to put up variation margin with the clearing association; am I correct?

A It the original position was long.

Q Yes, and it would have to put up that variation margin. If what it had received from its customer was the commodity and that commodity was worth less because of the declining, then the brokerage firm might not be protected; am I correct?

A Yes, the cash value of that commodity that it accepted could go down in value.

Q Is it your expert opinion that the appropriate procedure for a brokerage firm which is buying contracts is to accept product margin from its customer?

MR. BERNFELD: Objection, your Honor; no foundation.

THE COURT: The objection is overruled.

I think the purpose of Dr. Leuthold was to enlighten us on how this market operated.

All right, you may answer the question.

A In 1963 I'm not sure what was appropriate among all the traders that were involved in the market at that time, but certainly product margin was put up at some -- in some instances and cash margin would be put up in some instances.

Q And it was up to the brokerage firm to decide whether it wanted cash or whether it was willing to accept product.

A In the case of hedgers, yes.

Q If the brokerage firm decided to take product margin, it was taking a risk that it was not taking with cash margin; am I correct?

A Yes.

Q Thank you.

You have described yesterday in your testimony

that prices in commodities fluctuate daily and even hourly on exchanges; am I correct?

A Yes.

Q And the fluctuations can be quite sharp; am I correct?

A Yes.

Q Are you aware, for example, that the price of September soybean oil for this year has varied on the Chicago board of trade from a low of 19.15 cents to 43.70 cents?

A Well, I'm not aware of that as a fact.

MR. LIMAN: Quotations are things, your Honor, that somebody can take judicial notice of. Could I ask him to look at the Wall Street Journal?

Q Is it a fact that the low for the September futures was 19.5 and the high was 43.70?

A The low is 19.15.

Q 19.15 and the high is 43.70?

A Yes. That's the range that that contract has traded in within the past year.

Q If we looked at October, the range was 18.50 to 32.75?

A Yes.

Q When you looked at these ranges, does that

suggest to you a manipulation?

A No.

Q Do you know that on August 18 a new high was set in the volume on the Chicago Board of Trade?

Let me put it differently. In July of 1975 the Chicago Board of Trade had more future contract transactions than at any time in its history?

A I know that this summer they have had a very large volume.

Q Does that increase in volume suggest manipulation to you?

A No.

Q Does the increase in open interest suggest manipulation to you?

A No.

Q Let's talk about the confidentiality of reports.

You said that traders who h ave contracts over a certain position were required to report to the Commodities Exchange Authority; am I correct?

A Yes.

Q Did you know that in 1963 the position that required reporting was 25 contracts?

A Yes, I was aware of that.

closing member

elr Leuthold-cross [339]

but I presume there was a closing at a price.

Q Right. And it leaves him then with his cash oil unhedged?

A Yes.

Q And subjsct to fluctuations after that?

A Yes.

Q And he can protect himself against those fluctuations, I assume, if he is able to make a sale of that cash oil immediately?

A Then he wouldn't own it any more.

Q And if he is not able to sell that cash oil right away, he will be unhedged?

A Yes.

Q And he will be riding the market, taking the risk of fluc ations from then on?

A Whether the market goes up or down.

Q Is that one of the reasons that the closing of a futures market is regarded as an extraordinary event?

A Yes, could be. Also that it happens so infrequently that I think we could call it extraordinary.

Q Have you ever closed the futures market that you play in your class?

A At the end of the semester, yes. We close

elrf 8 Leuthold-redirect

Q Yesterday Mr. O'Donnell asked you a number of questions pertaining to Norman Miller's book, The Great Salad Oil Swindle.

Have you read that book?

A Yes, I have.

Q Do you know whether that book indicated Mr. Miller's profession?

A I don't know if it was indicated in the book or not. I'm aware of what his profession was.

Q What is your awareness?

A He was a reporter for the Wall Street Journal.

MR. BERNFELD: Your Honor, in light of the great amount of --

THE COURT: Just ask the question, please. Are you going to ask him a question?

MR. BERNFELD: No. Your Honor, I'd like to offer as Plaintiff's Exhibit 248 for identification Norman Miller's book, The Great Salad Oil Swindle.

THE COURT: Are you offering that in evidence?

MR. BERNFELD: I'd like to mark it for identification at this point.

THE COURT: You may offer it for identification.

(Plaintiff's Exhibit 248 marked for identification.)

MR. BERNFELD: I'd like to offer it in evidence, your Honor.

MR. O'DONNELL: Objection. No foundation.

THE COURT: That objection is sustained at this point. As a matter of fact, I trust that you won't get a foundation to get that book.

Q I'd like to ask you about Plaintiff's Exhibit 248 for identification, which is a paperback copy of the book, The Great Salad Oil Swindle. Would you take a look at the Table of Contents and the Index?

(Pause.)

Would you take a look at the first page of Chapter 1?

(Pause.

Do you recognize the material that you have just read as Mr. Miller's book, The Great Salad Oil Swindle?

A Yes, I believe it is the same book that I read.

MR. BERNFELD: Your Honor, I'd now like to offer this in evidence.

MR. O'DONNELL: Objection, your Honor.

MR. MINNEROP: Objection, your Honor.

THE COURT: The same ruling.

MR. BERNFELD: No further questions, your Honor.

A No. Not specifically.

Q Were these records inspected by you in Washington first?

A Yes. I saw this at a meeting in Washington. I became aware of the existence of this book and I asked whether or not we could get a copy, and they said yes.

Q And this was after the Court had ordered them to make available the documents to you?

A That is correct.

Q Before that you couldn't get the documents from them, am I correct?

A That's correct.

MR. LIMAN: I object on grounds of relevancy to tis document. I do not believe by itself it is intelligible to anybody or that its significance is discernible.

MR. MINNEROP: Same objection.

MR. FRYER: Same objection.

THE COURT: If you are going to object, rise to make an objection on a different ground. One objection covers everybody.

MR. MINNEROP: Thank you, your Honor.

THE COURT: Yes, Mr. Fryer?

chart, 129, correspond to the information contained in this book.

THE COURT: I think that is sufficient for now. I would suggest that you verify that sometime during the weekend. But that is sufficient.

MR. HARRIS: I believe, your Honor, Exhibit 183 is the one we furnished to the other counsel too. So if it turns out to be the same figures, it would be helpful to all of them.

MR. LIMAN: Could the witness hold the place in that book?

THE COURT: Page 149, Mr. Liman.

Q Mr. Ellison, you previously indicated with regard to Exhibits 127 and 128, which we were just referring to, you set forth information concerning refined cottonseed oil and did not set forth any information concerning crude cottonseed oil.

With respect to Exhibit 129, the information covers both crude and refined cottonseed oil. Can you explain why on Exhibit 12. the information is contained as to both crude and refined?

A We were initially requested to find statistics for refined cottonseed oil, exports only. However, no place-- we were unable to find any published information with

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respect to that, and the only thing available was information for crude and refined. And accordingly we prepared a chart on that basis.

MR. HARRIS: Your Honor, I would like at this time to offer Exhibit 129 for identification, as well as subject to the verification, Exhibit 183, I believe, for identification.

THE WITNESS: Yes, 183.

VOIR DIRE EXAMINATION

BY MR. LIMAN:

Q Some of the books that you relied on were from the Chicago Board of Trade, others from the Department of Agriculture, and other information from the Produce Exchange and Clearing Association. Where is this book from?

A This book is from an organization called "Commodity Research Bureau."

Q May I see it?

A Yes.

Q And the boo that you are showing me was published in 1969, am I correct?

A That is correct.

MR. LIMAN: Your Honor, in addition to the objections that I have stated before on relevance, I

would direct your Honor's attention to the book, the second chart, which seems to me to have nothing to do with anything here.

MR. HARRIS: Your Honor, may just see which chart was being referred to, because I didn't have the book in front of me.

THE COURT: Yes. The second chart on page 149.

MR. HARRIS: Maybe I misunderstood the witness, your Honor. I believe he indicated he referred to the first, he was using the first chart on 143.

THE COURT: I know, there is no question about that. Mr. Liman is merely pointing out that on that page there is a chart that he says has nothing to do with what we have here.

MR. HARRIS: I would agree.

THE COURT: There is no other voir dire, I gather?

MR. FRYER: Yes, I have a question, your Honor.

THE COURT: Well, don t be shy. Speak up.

VOIR DIRE EXAMINATION

BY MR. FRYER:

Q Mr. Ellison, who instructed you to stop this chart in December of 1963? I believe that that is the last month that appears on the chart.

A You mean who specifically?

Q Yes.

A Counsel had requested that the chart be prepared comparatively for '61, '62 and '63.

THE COURT: Can we save some time? Isn't it true that you prepared all those charts at the instruction of counsel for this litigation?

A Yes, your Honor.

THE COURT: All right. So we will save ourselves some time. There is no question about that.

MR. O'DONNELL: No questions, your Honor.

MR. FRYER: That is all.

THE COURT: Same ruling.

FURTHER DIRECT EXAMINATION

BY MR. HARRIS:

Q Mr. Ellison, can you turn your attention to the next chart, Exhibit 130 for identification.

A Yes.

Q Can you describe in general terms what

information is set forth on that exhibit?

A This chart sets forth the aggregate number of cottonseed oil futures contracts bought and sold on a monthly basis by selected brokers for the period January through November 19, 1963.

Q Mr. Ellison, what do you mean by the aggregate number of contracts bought and sold?

A By aggregate, I meant the total bought and sold by each individual broker.

Q How did you prepare Exhibit 130 for identification?

THE COURT: Since you are defining terms, there is another term I would like to have defined. You defined aggregate. There is something called selected brokers. Can define that?

Q Can you define what you mean by selected brokers?

A Yes. I originally had a chart which had additional names, every other broker, but the other brokers in the aggregate -- or individually were relatively small, and as a result it was felt that we should prepare a chart only with those brokers having larger quantities. So as a result there was a caption "All others," which covers other brokerage firms.

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Q All the brokerage firms whose names are not individually listed on Exhibit 130, who bought and sold cottonseed oil contracts, during 1963, included in the group denominated as "All others" on that exhibit?

A That is correct.

Q Mr. Ellison, can you tell us how you prepared Exhibit 130 for identification?

A 130 was prepared essentially from the records of -- was prepared from the records of the New York Produce Exchange Clearing Association, and it was developed from the individual daily machine-produced settlement sheets or recap sheets and tied into the monthly billings of the clearing association to the individual members.

Q Where did you obtain these records?

A These records were obtained from the New York Produce Exchange Clearing Association.

Q And when was that?

A This was in 1965, '66.

Q Do you have with you, Mr. Ellison, any of the records, any of these records?

A Well, I have with me some sample sheets that were utilized in the preparation of this particular exhibit, as well as some of our work papers which were used in the development of the information.

Q May I see those sample sheets.

A The sample sheets would be, in this instance --

Q No, no. May I see them?

A Yes (handing).

Q Mr. Ellison, do you know where the remaining sheets are that you used to prepare Exhibit 130 for identification?

A They were at the New York Produce Exchange Clearing Association.

Q And how many such sheets are there?

A Oh, numerous sheets. There would be a sheet for each broker for each day.

MR. HARRIS: May I have just one minute to confer, your Honor. We requested that the records all be brought here, but we are not sure that they arrived or not, because they have to compile. I just want to find out if they are here.

THE COURT: If there is one sheet for every transaction each day, if you are planning to bring those into the courtroom, you might as well save yourself that trouble.

MR. HARRIS: Defense counsel requested them.

MR. LIMAN: I am prepared to have them --

THE COURT: The problem with that is, if that

is the basis upon which you can prove a verification, it is obviously not capable of being digested in this trial. Therefore, I don't need to postpone that, if that is what you are planning to do, until 5 o'clock.

MR. HARRIS: No, your Honor, I wasn't -- I am sorry.

THE COURT: If the only way that these figures can be verified is by the actual evidence which would be put into the case, so many thousands of pages for every transaction, if that is the only way to do it, it obviously is incapable of verification in this case, and I don't have to wait until 5 o'clock. This document can't come in, if that is the only way you can do it. That is physically impossible.

MR. HARRIS: I understand, your Honor.

THE COURT: Even if you could bring it in, it is physically impossible for the jury, if they wanted to, to make the examination which, if they cared to make, they would be entitled to make in regard to it. So that it is clear that on that basis Exhibit 130 is, without objection -- this is a Court's objection, I suppose -- that that exhibit can't be received.

MR. HARRIS: I am sorry, maybe I was unclear. I don't think I need those documents to support the

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exhibit. The defense counsel requested they be here so they could examine them in connection with voir dire or something of that sort.

THE COURT: Mr. Harris, any document, any chart that comes in, I have instructed the jury that the jury is entitled to have underlying data concerning it. They are entitled to have the underlying data, to examine it if they want to, and to make their own independent evaluation as to the accuracy of the chart. They can't possibly do that with these documents.

MR. HARRIS: Your Honor, we believe that under Rule 1006 of the Federal Rules of Evidence that this is precisely the reason why you need charts like this, to summarize voluminous records that cannot be made available in court. We provided the defense counsel with these charts a couple of months ago so that they would have an adequate opportunity to check the accuracy of the figures.

Every day each clearing member records his position with the clearing association, which are tallied onto cardsand this is a summary. I may be able to establish that there are summaries of these documents which we could have here which are much briefer. The only thing I understand about this is that if you and the

defense counsel agree to the validity of the various charts and agree that they don't have to be validated, then that is something else. But there is no such agreement.

MR. HARRIS: I understand that.

May I proceed, your Honor?

Q Mr. Ellison, I show you Exhibit 130A for identification, which is the sample sheets you indicated that you saw. Can you just explain in a general way what information is set forth in those sample sheets?

A Exhibit 130A contains a number for each clearing association member. This particular sheet, the first one, refers to 31, 31 being and is identified as Merrill Lynch -- it is MLPF&S, Inc.

The sheet reflects, not necessarily in this order, the contracts carried over from yesterday, that is, the open contract position by contract month and the total for all contract months, long and short. It further reflects the trading, the number of contracts bought and the number of contracts sold by contract month.

In addition, another group of columns contains the contracts carried over for tomorrow, which would be the closing position on that day for that particular

closing member.

Q Mr. Ellison, do you have any work papers that you used in tabulating the information contained on Exhibit 130 for identification?

A Yes.

Q Do you have them with you today?

A Yes.

Q Can I see that, please?

A This is a summary of the bought and sold by individual contract member -- individual clearing house member for the period January through May 31. And behind that is the individual buildup of the particular trades on a daily basis.

THE COURT: I think this is a waste of time. What rule are you referring to?

MR. HARRIS: 1006, your Honor, and also the Advisory Committee's notes to that rule, if you have that, your Honor.

THE COURT: My ruling on that still stands.

Q Mr. Ellison, do you know if the clearing association has any summary information which it retains during 1963 of the materials we have marked as Exhibit 130A for identification?

A Yes. The clearing association recently made

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subpoena and a court finally decided that you were entitled to see them, sometime in 1965, am I correct?

A That is correct.

Q And am I correct that Allied's name doesn't appear on these 1003 forms, am I correct?

A You are correct.

Q They are filed by code number?

A Right.

Q And you would have had to know who was the holder of the code to that number, who was assigned that number to know that these were Allied's positions?

A That is correct.

Q And the same is true of all of these four booklets that are 132B, it's all filed in code, is that correct?

A That's right.

Q And it was all obtained by subpoena with the CEA saying that they were confidential and they shouldn't have to turn them over, is that correct?

A The details of the subpoena I'm not aware of, but I think that is the genesis of it.

Q You are aware that Haupt acted as the clearing broker for most of the transactions for Allied in the fall of 1963, am I correct, the transactions that are

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THE COURT: Did they know his position? I understood that they wouldn't know.

MR. HARRIS: We are going to contend in this trial that they did know and that it is impossible that they did not know. But not to the very contract, your Honor, but that this argument that they had no way of knowing who controlled 90 per cent of the argument is absolutely fallacious and that they did know and that everybody knew in 1963 what was going on and who had the big position.

THE COURT: I think that, at best, on that you are going to have to establish that first. There has been testimony that has been conceded, and conceded apparently by witnesses from you, at the present time that these things were confidential and that the name of the party was something that was not known to anyone.

MR. HARRIS: Your Honor, if I may, I think what has been conceded is that the reports filed with the Commodity Exchange Authority were secret. We don't deny that. As the evidence showed, we had to subpoena them to get them. But the information was known outside of those reports.

THE COURT: I understand, and I thought it was conceded by Dr. Leuthold in any event, that anybody

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THE COURT: How do they know it exceeds the amount of oil in the United States?

MR. HARRIS: Because these figures are published all the time, and we say they either knew it or they should have known that, looking back year after year. You didn't have that much oil in the United States at any time.

THE COURT: All right. At least I got your point. I think the other exhibits were withdrawn, weren't they?

MR. HARRIS: No, 129 was not withdrawn, your Honor. That was the one that was subject to checking the accuracy over the weekend, but I think it is accurate.

THE COURT: But all this is, is the inventory?

MR. HARRIS: No, 129 is exports. It is the same kind of information, I think, your Honor.

THE COURT: All right.

MR. HARRIS: Your Honor, may I just address myself to 130 and 131 on the point we were discussing while the jury was in?

THE COURT: Yes.

MR. HARRIS: It seems to me, your Honor, that when you have thousands of documents that exist in a

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file somewhere, in this case in the clearing association, and we have gone down and tallied up the documents and we have made an offer to the defendants to check the figures and given them several months, told them what documents we have looked at, given them samples, made an offer, and the lawyers for the clearing association have made clear that they would make records available to whoever wanted to see them --and they have been very cooperative in that regard -- that we can't be put in a position when we come to trial that exhibit isn't admissible because the defendants refuse to stipulate to the accuracy of the preparation, and we are not entitled to bring in volumes of underlying documents because that will clutter the record.

Because then in that sense we are forced to not admit any of this evidence, which we think is very material and very relevant,when they had several months to check it.

So this isn't a question of unfairness or surprise or anything of that nature. It just seems to me that that is the very purpose of rule 1006.

THE COURT: I disagree.

MR. HARIS: But in any event I would certainly like an opportunity to present a memo of law

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as I sit here, and I think you are exactly on the right track to say get somebody on here who can testify about something that he knows about happening in 1963 and what he saw as of that time.

MR. LIMAN: Your Honor, do you remember a man who was Secretary of Agriculture by the name of Orville Freeman? There is a case Seligson v. Freeman, which I believe went up to the Court of Appeals -- it was at least at the district court level -- involving whether or not, even after all of these events, the CEA would have to make available these records. And they finally had to make them available.

That is in essence the prejudice: That my client and everybody else's client in this room is being said to have this kind of information, which was so secret, imputed to him, and then done in this graphic way.

He says he is going to put on evidence that we knew, that everybody knew. I don't know how you prove that everybody knew, but let him do that, and then we have got the foundation for the case.

I think the problem is that he is not going to be able to prove thatfoundation. And then to let this thing come in first, in its inflammatory form, is just simply to make a case into a shambles.

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witness stand who is going to tell us about these warning signs, tell us about these other things that were present, and so forth and so on, before I am going to allow any of these statistics to come in.

Now, it may require you to reorganize to some extent and regroup, but it seems to me that is what you have to do. If you do that, then I certainly am in a better position to make fair rulings and at least rational rulings about the admissibility of the charts when Mr. Ellison testified. But I am in the dark now. You are telling me what your theory is. Get somebody to tell us about what these signs are, what they mean and so forth. And he can tell us that in a digestible form.

MR. HARRIS: Your Honor, can we interrupt Mr. Ellison then on Monday and start with our expert?

THE COURT: I would suggest that you have a talk -- and I will be as lenient as I can in terms of, you know, getting that for you to allow him to testify, and get your theory, so I will know what you have and the defense will have something to shoot at. At that point maybe Mr. Ellison's charts may be essential, maybe they won't be.

All right, goodnight.

(Adjourned at 5:25 p.m.)

neighborhood.

Then again I am currently serving on an ad hoc committee which is advising the Chicago Board of Trade on some of their educational programs.

Q Do you have any other associations with commodity exchanges at this time?

A Yes. I'm presently a member of the Board of Directors of the Minneapolis Grain Exchange, which is a contract market which trades in the principal grains.

Q What is the nature of your position on the Board of Directors?

A Well, I am what is known as the public member of the Board of Directors. I am supposed to represent, and I try to do that, the interest of the general public on our Board of Directors.

Q How long have you served in this capacity?

A I am completing my third year now in this capacity.

Q Are there other commodity exchanges, Professor, which have directors serving the interests of the general public?

A One that I know of for sure -- in fact, I just discovered this. I was down at Chicago. I think the Chicago Board of Trade has on their Board of Directors three

warehouse receipts to deliver on the contract. So you would have a corner, I guess, whenever the shorts really have to squirm and pay theprices demanded by the longs.

Q What is meant by a manipulation of the futures market?

A Price manipulation would be any action which would interfere with the normal price-making mechanism of the market. In other words, where prices would not reflect the true supply and demand conditions. This is how I would define a price manipulation.

Whenever that market does not reflect the true price as would be determined by supply and demand, you would have a manipulation.

Q What would be some of the signs or indications that there may be a corner of a price manipulation taking place?

A Well, there are a number of considerations that have to be looked at. There is no one single factor because, you know, these things -- these markets are complex and there are anumber of factors, let's say, that a business conduct committee of the exchange and the board of directors would have to look at in determining whether or not we are having any manipulation

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of prices on that exchange.

Now, among those things that you would -- factors that you would look at would be sharp changes, usually increases in the volume of trading, sharp changes in the -- increases in the volume of open interest, a change in the distribution of who held the open interest, and there are several other factors that we can also mention.

Q What would some of those other factors be?

A Well, another factor which is important, for example, would be the number of contracts, futures contracts, settled by actual delivery of the commodity in the delivery month and, finally, the number of transactions that take place in that fugures market outside of the trading pit, the so-called ex-pit transactions.

Q Professor Dahl, are you familiar with some of the sources of information which were available in 1963 to members of the board of managers of the New York Produce Exchange which would have contained information relevant to their duties to regulate the cottonseed oil futures market?

MR. SMITH: Objection to the form of the question, your Honor.

THE COURT: The objection is sustained.

Q Professor Dahl, what sources of information were available to members of the board of managers in 1963 which would have enabled them to become familiar with the various market indicators which you have described?

A Well, the first primary source would be the information and statistics published by the Commodity Exchange Authority.

The Commodity Exchange Authority had published daily data on the daily volume of trading on the market, the amount of the open interest in each delivery month on the market. This was published daily and available usually -- when the market opens in the morning, the traders have avalable to them the volume of trading during the previous day, the amount of open interest in the different contracts, and then at the end of the month the commodity exchange authority issues a report which is still being issued, by the way, on commitments of traders which breaks down the open contracts on the long side of the market and tells us how much of the market is held by large speculators, large hedgers and small traders, and then it does the same thing for the short side of the market, to show on the short side of the market how much is held by large hedgers, large speculators, of course, the small non-reporting traders.

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One other thing I might mention here in addition to the U. S. Department of Agriculture statistical reporting done through the Commodity Exchange Authority, you have, of course, data that is published by the markets themselves on prices.

One of the primary functions of these markets is to issue price quotations.

We have full price information available through the markets themselves.

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Q Professor Dahl, I would like to show you a document marked Plaintiff's Exhibit 11 for identification. I'd like to call your attention to the top of the front page and the information contained on the second page.

THE COURT: What is this?

MR. BERNFELD: Plaintiff's Exhibit 11 for identification, your Honor.

Q The top of the front page and the information contained at the top of the second page?

THE COURT: I don't think I remember what that is.

A There is a United States Department of Agriculture Commodity Exchange Authority report which shows the futures trading and open contracts. The first page says cotton, wool tops and wool, and the second page says futures trading and open contracts in cottonseed oil and soybean oil. And the date is January 19, 1961.

Q Professor Dahl, was this the type of information to which you were referring when you said that memebers of the board of managers would have access to information concerning volume of trading?

A Yes. This type of information is available to the exchange as well as to the general public.

Q Would the New York Produce Exchange in the regular course of this business have received this document?

A Yes, I think they should have, would have.

MR. SMITH: I object, your Honor, to the regular course of the produce exchange's business. No foundation for that.

THE COURT: There is no dispute about the fact that the New York Produce Exchange actually received information from the Commodity Exchange Authority?

MR. SMITH: Withdrawn.

MR. BERNFELD: Your Honor, the plaintiff respectfully offers document marked Plaintiff's Exhibit 11 for identifcation into evidence.

MR. O'DONNELL: I object on the grounds of relevancy.

THE COURT: I will withhold ruling on that. Let's move on, Mr. Bernfeld, and get Professor Dahl's testimony.

MR. BERNFELD: Yes, your Honor. I just want to point out that on page 3, I misspoke, it was a November 20, 1963 statistic.

THE COURT: What difference does it make? The point is that Professor Dahl made certain statements

about certain things being available and what should have been available.

Now, get his testimony.

Q Professor Dahl, I show you next Plaintiff's Exhibit 10G for identification and ask whether you can identify that document.

A Yes. That is the monthly report that is issued by the Commodity Exchange Authority, entitled "Commitments of Commodity Traders."

This one happens to be dated July 31, 1963. This is published monthly, at the end of each month, and it's the one I previously referred to that breaks down who holds the futures contracts on the long side of the market and who holds them on the short side. It comes out every month.

Q Professor, I show you next Plaintiff's Exhibit 124 for identification. Do you recognize that document?

A Yes. This is a document that shows the commitments of traders in cottonseed oil futures at the end of each month during the period January through October, 1963.

Q Professor, do you have an opinion whether this information was relevant to knowledge of market

here today.

THE COURT: She doesn't know. As long as you keep him from counsel table, I think we will be all right. She has no idea -- she just wanted to bring it to my attention.

MR. LIMAN: Maybe your Honor would inquire if he is still in the courtroom. If she sees him there. Then we will know.

THE COURT: All right.

(In open court, jury present.)

BY MR. BERNFELD:

Q Professor Dahl, is information concerning the number of deliveries on first notice today available to members of the board of directors of commodity exchanges?

MR. SMITH: Objection, your Honor. Objection as to form, your Honor.

THE COURT: The objection is overruled.

A The information on the number of deliveries made on futures contracts in the delivery month is available to everyone in the market.

THE COURT: When you tell us something like that, let us know how is it made available. We are all ignorant of this, at least the jury and the Judge are.

Just tell us how these things are made available, what form and so forth, if you will.

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THE WITNESS: Well, the number of deliveries that are tendered is published each day in these markets and --

THE COURT: By whom? Who publishes that?

THE WITNESS: By the Clearing Association.

THE COURT: How do they do that?

THE WITNESS: They put the number of deliveries made and let's say accepted. It is put on the bulletin boards on these markets every day.

THE COURT: All right.

Q Nothing secret about that?

A There is nothing secret about this information at all. It is a part of the normal operation of the market.

THE COURT: All right.

Q What is the significance of the number of deliveries made in satisfaction of futures contracts, Professor Dahl?

A Well, I would have to explain it like this:

Normally futures markets are used for pricing. In other words, people do not buy and sell -- or sell futures contracts with the idea of either taking delivery or making delivery. They use these contracts for pricing.

In other words, they are not used for merchandising. By used for merchandising, I would explain it this way:

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Q Would there be any significance to a sharply increased number of deliveries on a commodity exchange in a given year, Professor Dahl?

A Yes, there would be a significance to this, in my opinion, because the people in the market should ask themselves why is it that shorts are making delivery on the contracts or the longs taking those deliveries.

This certainly is not a normal situation in the futures market.

Q Why would they be asking themselves that question?

A The principal reason, in my opinion, that they would ask themselves is the question: You see all of these deliveries. Why is it that one can go into the cash market, purchase this oil and deliver it in fulfilment of these futures contracts which is obviously advantageous to the shorts to do so.

This indicates that these prices somewhere are still out of line because it is a delivery mechanism that brings the two in line really.

When you have a large number of deliveries, you ask yourself why is it that the shorts are making this delivery and, furthermore, who is taking the delivery and why, when you have large volumes of contracts settled by actual delivery.

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MR. O'DONNELL: I only rose because I thought there was confusion as to what the CEA produced.

THE COURT: I would think that I am going to do it that way, and you are going to be able to go beyond voir dire in the question of methodology, et cetera, before we get to a point of conclusion. I just don't know whether Mr. Bernfeld has reached that point yet. Let's have him get everything out, and when you are ready to ask him about conclusions, we will interrupt the cross examination.

MR. O'DONNELL: Thank you, your Honor.

BY MR. BERNFELD:

Q Professor Dahl, I'd like to show you Plaintiff's Exhibit 122 in evidence. Are you familiar with that document?

A Yes. This is the document that shows the monthly volume of trading, the cottonseed oil futures contracts from the year 1963, and in addition there are '62 and -- individually they are shown for '62 back to 1957.

Q You indicated that you compared 1963 to a prior average for five years?

A Yes.

Q With respect to monthly volume?

A Yes.

Q How did you go about doing this, and for what

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purpose?

A Well --

MR. SMITH: Objection to the form, your Honor. It is two questions.

Q How did you go about doing this, Professor?

A One thing that as an economist we very commonly do is to look, if we are interested in looking at one year to see whether it is different from the others. We calculate an average of, let's say some previous time period, and then compare the current year that you are concerned with, with that previous average.

MR. BERNFELD: Your Honor, I'd like to have this document marked 122-A for identification.

Q Are you familiar with this document, Professor Dahl?

A Yes, I am.

Q Would you describe it to us?

A Well, this is a chart that I have down which shows the volume of trading in cottonseed oil futures in 1963, by month, as compared to the average volume from 1958 to 1962, which I calculated. And I drew a graph of those comparisons.

Q Did you draw directly on to that transparency that you have in your hand?

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A No, I didn't. We use, in education, we use charts and graphs to explain relationships of data very, very much. So I drew the chart first on a piece of graph paper, plotted out the lines. Then I took this chart that I had drawn myself, to a draftsman, and he drew the graph on a transparency, which enables us to project this up to show what these comparisons are.

Q Project it in what manner, Professor?

A Projected through an overhead projector.

Q What is an overhead projector?

MR. SMITH: Your Honor, we don't need his technical expertise on what an overhead projector is.

THE COURT: We haven't reached that point yet. We have established that he has done that. If you ever get to the point of an overhead projector then we will consider it. But we are not there yet.

Q Professor Dahl, did you supervise the work of the draftsman who copied the chart you drew on the graph paper?

A Yes, I did. I drew the original charts and the draftsman traced them --

THE COURT: He has already told us. He did it himself and he took it to someone who put it on there.

Q I show you next Plaintiff's Exhibit 123 in evidence. Are you familiar with that document, Professor

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Dahl?

A Yes, this shows the size of the open interest by months in cottonseed oil futures for 1963 and also three previous years, '62, '61, 1960.

Q I show you next Plaintiff's Exhibit 123-A.

Are you familiar with that document?

A Yes, this is a graph that I drew to compare 1963 with the previous year's average.

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THE COURT: And it was prepared on that same way as the other one.

THE WITNESS: The same way.

Q Professor Dahl, earlier we showed you Plaintiff's Exhibit 124 for identification.

Do you have that up there, the monthly commitment of traders?

A I believe I do.

Q Yes, here it is.

(Indicating.)

I would like to next show you Plaintiff's Exhibit 124-A.

Are you familiar with this chart?

A Yes, I am.

Q Would you describe it to us?

A It is a chart that shows the percentage of the long month end open interest that is held by large speculators, large hedgers, small traders in cottonseed oil futures during the period January to October 1963.

Now, I have used -- calculated some percentages from the absolute numbers that are shown in this table because very often you see it is more easy for us to visualize something if we see -- take the long side of the market and I split this down in percentages, it is easier for

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us to see the relative importance than if we look at, let's say, absolute numbers.

THE COURT: Am I to understand that one of the things that you looked at and that you are relying upon for whatever opinions or conclusions you have reached is Plaintiff's Exhibit 124? Have you studied that?

THE WITNESS: Yes, I have studied that, your Honor. I have drawn this chart.

THE COURT: Based upon that you have drawn a chart?

THE WITNESS: Yes.

JUROR NO. 11: I missed what you said. I missed the last remark.

THE COURT: I asked whether Dr. Dahl had studied Plaintiff's Exhibit 124, was one of the bases for his conclusions.

He said he had done so and he had made a chart, which is what, 124-A?

MR. BERNFELD: Yes.

THE COURT: All right.

Q I show you next Plaintiff's Exhibit 125 for identification.

Are you familiar with this, Professor Dahl?

A Yes. This shows the cottonseed oil futures

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contracts settled by delivery.

THE COURT: What we want to know, what I want to know, in any event, is that are you relying upon 125 for identification also as a basis for whatever conclusions you reached? Are you?

THE WITNESS: Yes.

THE COURT: All right.

Q I show you next Plaintiff's Exhibits 125-A and B for identification.

Can you identify those charts for us?

A These are two charts that I prepared from the data in this table which shows the -- the first chart shows the percentage of the cottonseed oil futures settled by delivery as compared to the size of the open interest, the first notice day, in four years, 1960, 1961, 1962 and 1963.

Then for the year 1963, also using that basic data I prepared a chart which showed the percentage of cottonseed oil futures contracts that were settled by delivery in each delivery month.

Now, if I may, you probably got this last time, but in a futures market we had these different delivery months. In these cottonseed oil futures we had -- contracts for future delivery were traded in six delivery months,

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March, May, July, September, October and December with the delivery months in which the contracts were traded.

Q I show you next Plaintiff's Exhibit 126 for identification.

Are you familiar with that document, Professor?

THE COURT: Don't ask him is he familiar with the document. Ask him had he used that document --

A I used this document to look at the -- I guess I would have to say to analyze the volume of ex -pit transactions on the New York Produce Exchange in 1963 and compared it with the volume of ex-pit transactions that occurred in previous years.

Q Are you relying on that document in connection with your testimony?

A Yes, I am.

Q I show you next Plaintiff's Exhibits 126-D and E for identification.

Did you prepare these documents?

A Yes, I prepared these charts based upon the statistical data in this table.

The one chart shows the yearly volume of cottonseed oil futures contract ex-pit transactions in 1963 as compared to the two previous years, and the other one shows the monthly volume of cottonseed oil ex-pit transactions

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during 1963 as compared to the monthly volume of ex-pit transactions in the two previous years.

Q I would like to show you next Plaintiff's Exhibit 133 for identification.

Are you reling on that document in connection with your testimony?

A Yes, I am.

This table shows Allied's, the Allied Crude Vegetable Oil Refining Corporation percentage or open position in cottonseed oil futures as compared to the total open interest that existed on the Exchange from July 15th through November 19th. It is Allied's position relative to the total open position.

Q I show you next Plaintiff's Exhibit 133-A for identification.

Did you prepare this chart?

A Yes, I prepared this chart on the basis of this data that was included in that particular table.

Q Professor, I show you together Plaintiff's Exhibit 131 for identification and a chart marked 131-A for identification.

Are you relying on that material in connection with your testimony today?

A Yes, I am relying on it, and I think it is

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significant information.

Q Did you prepare 133-A based upon --

A Yes.

Q Did you prepare 131-A based upon --

A Yes, I did, I prepared this chart on the basis of this table.

Q Would you identify those numbers?

A You mean the last one, 131?

Q Yes. I just wanted you to refer to them by number, Professor.

A Yes. It is Exhibit 131, and that goes with my chart 131.

Q 131, is that?

A Yes, 131 --

THE COURT: It is 131, 131-A.

Q Professor Dahl, with respect to the tables and the charts that you now have in front of you, was any of the information presented on those tables and charts confidential from the Board of Managers of the New York Produce Exchange in 1963 in connection with their regulatory duties?

MR. SMITH: Objection to the form of the question.

A Not that I --

THE COURT: The rules are that you have to wait until I rule before you can talk.

THE WITNESS: I'm sorry.

THE COURT: All of those documents that youhave thus far reviewed and looked at, were they based upon reports of the Commodity Exchange Authority, all the documents up to now that we have talked about, 123, 124 through 131?

MR. SMITH: There was 133, your Honor.

MR. BERNFELD: Your Honor, some of the numbers have been skipped. The sources appear at the bottom of each chart.

THE COURT: All right, all the documents that you have.

Do you have all the documents that you have been asked about before you?

THE WITNESS: Yes, I do.

THE COURT: Were all of those documents based upon reports of the Commodity Exchange Authority?

THE WITNESS: No.

THE COURT: Which were not?

THE WITNESS: Which were not?

THE COURT: Yes.

THE WITNESS: I would have to check here and see.

THE COURT: Would you?

THE WITNESS: 122, showing volume of trading is a Commodity Exchange Authority document.

THE COURT: I think most of them are. You just tell me the ones that are not.

THE WITNESS: That are not? There may be more that are not than those that are.

THE COURT: All right.

THE WITNESS: The one on open interest also came from commodity futures statistics. That is 123.

124 also came from Commodity Exchange Authority data. That is the third one.

125 --

THE COURT: That came from the Commodity Exchange too.

THE WITNESS: Right, 125, that is the contract settled by delivery. They published that information.

THE COURT: All right.

THE WITNESS: Volume of -- monthly volume of ex-pit transactions. This is 126. This is compiled from records of the New York Produce Exchange.

THE COURT: All right.

THE WITNESS: 133 --

MR. O'DONNELL: Your Honor, the witness obviously was just reading from 126. He was saying this is compiled

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from records of the New York Produce Exchange which is a note on here. It is not something published by the New York Produce Exchange.

MR. BERNFELD: He didn't state it was, your Honor.

THE COURT: I understand. He didn't say that, Mr. O'Donnell.

I am going to give you every opportunity to go into that, gentlemen.

I just wanted to find out where the documents were. Does that cover it?

THE WITNESS: There is one more, your Honor. The date on mid-month end open position. This was Allied's -- this came from Allied's reports to the Commodity Exchange Authority.

THE COURT: I guess the question is:

Was that information available to the Board of Managers or Executive Board of the New York Produce Exchange in 1963?

MR. BERNFELD: Would you answer that question, Professor.

THE WITNESS: I would say yes.

THE COURT: All right.

MR. BERNFELD: Did the Professor complete the last two charts, your Honor?

THE COURT: Yes. 131 and 133.

THE WITNESS: 131, that one was the -- that came from records of the Clearing Association.

THE COURT: 131?

THE WITNESS: Yes.

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grl Dahl-cross [598]

Q Was this information available to the board of directors of the produce exchange in 1963?

A Yes.

Q Was there one more chart that you had there, Professor?

A I think I --

Q Is that it?

A I think I went over them.

MR. BERNFELD: Your Honor, at this point we would wish to go into the discussion substantively of what this material shows.

THE COURT: Gentlemen, whatever order you may cross-examine.

MR. O'DONNELL: Yes, your Honor.

TEH COURT: I am not limiting you, as I indicated, to strict voir dire. You may cross-examine on sources, on how he got his information and anything that is relevant to what we have heard so far, reliability of the data that he's relying upon and so forth.

MR. O'DONNELL: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. O'DONNELL:

Q With respect to trading on the commodities futures markets, Professor Dahl, is there any information

gr2 Dahl-cross [599]

that traders have that they regard as confidential, not available to other traders?

A Yes, that's right. That's the position of other traders. That is regarded, of course, as confidential.

Q Is that published daily by the Commodities Exchange Authority?

A No, it's not published daily by the Commodities Exchange Authority. However --

Q Wait. Just answer my questions, please.

A I'm sorry.

Q We are not in school. I 'm asking the questions.

THE COURT: Mr. O'Donnell, all right. Let's keep our cool.

Q You s / the traders keep their position with respect to the commodity confidential from other traders, do they?

A Yes.

Q Is the position in any given month that a trader has or any day of the month known to anybody besides the trader himself?

A No, it's not to the ordinary member, to the ordinary member of the market.

gr3 Dahl-cross [600]

Q All right. It's not known to the ordinary member of the market.

Is it known to anybody besides the trader himself?

A It can be known to the business conduct committee or the board of directors if they feel that it is necessary to investigate any suspicious conditions in the market.

Q Please, would you try to answer my question, Professor Dahl.

Is it known to anybody but the trader himself at the time he has this position in the commodities futures market? Don't you know it's known to the CEA, the Commodity Exchange Authority?

A Oh, yes. It is known --

Q Don't you know he has to report it to the Commodity Exchange Authority daily?

A I know that.

Q Does he report it by his name or does he report it in some kind of code? Will you answer that?

A He reports it in a code.

Q Why is it reported in a code?

A To keep the positions confidential.

Q Does the trader likewise daily or monthly

report his position to the commodity exchange, Minneapolis Grain Exchange? Yes or no.

A He doesn't report his position to the grain exchange.

Q Did he report in 1963 his position to the New York Produce Exchange?

A Not to the produce exchange.

Q Did the individual trader report his position to the New York Produce Exchange Clearing Association, the individual trader?

A The individual trader does not report his individual position to the clearing association.

Q He doesn't report it to anybody but the Commodity Exchange Authority; is that not right?

A That's correct.

Q Who is the person outside of the Commodity Exchange Authority who knows most about the position of a trader on an exchange?

A The clearing association.

Q How about the broker handling the account for the trader?

A Yes, the broker would certainly know the positions of the traders that he's trading with.

Q Did Haupt know anything about the position

Q Now, that has the figures on a monthly basis for 1963 and then it has the figures of the preceding years, 1957 thorugh 1962; do you see that?

A Yes.

Q Did you prepare this chart of did somebody else prepare it, Exhibit 122?

A Somebody else prepared this chart, compiled this from the commodities futures statistics.

Q You didn't prepare it?

A I didn't prepare it.

Q Did you use it, did you, in your work?

A Yes.

Q And from it, from this very document you prepared the graph which has now been marked for identification as Exhi-it 122A, is that right?

A Yes.

THE COURT: Can we save some time, Mr. O'Donnell; I think it is a fact that all of these exhibits, 122 that you relied upon, you dind't prepare them?

THE WINTESS: No,I didn't.

MR. O"DONNELL: I thought it was confusing. I thought the witness said he had prepared some of them.

THE COURT: No,he prepared the A's.

Q With respect to Exhibit 122A, do I understand,

because I haven't seen that, that with respect to years other than 1963 your graph simply shows the average of those years?

A Yes, sir. My graph shows the average.

Q Why didn't you show the price fluctuations for each of those prior years as you did for the year 1963? When I said price fluctuation, I meant volume fluctuation, I'm sorry.

A Well, I htink as I looked over the volume figures, I thought it would make a more meaningful comparison if we compare 1963 with an average over a five-year period, than you can have a better basis for judging whether or not 1963 was different from, let's say an average year in the past five. This is avery common way of handling statistical comparison.

Q Isn't it a very common way and a more accurate way to show the volume fluctuation if you are comparing one year with another or with a series of other years, to show the actual volume fluctuation, rather than to change the figures by creating an average?

A I would disagree with you here, counsel. In my opinion as a teacher, this was my judgment, that I could compare 1963 better if I looked at the average year over a five-year period.

elr Dahl-cross [606]

Q And you recognized as a teacher, did you not, that by taking an average for the year 1957 through '62 on for whatever period you took the average, that you were smoothing out the peaks and the valleys in the volume fluctuation for each year; something that you were not doing by taking an average of 1963?

A This I will admit is one of the -- I had thought about this, counsel, to calculate what is known as standard deviation. Are you familiar with that concept?

Q I'm not familiar with it at all and I don't care about it.

A Standard deviation --

Q I don't want to hear standard deviation. Ijust want to know why you have --

THE COURT: Please, Mr. O'Donnell. You have asked him to explain why, and he is trying to do it. I am going to allow him to explain it. He's trying to answer your question. You may proceed, Professor.

A Well, repeating, counsel, it was my judgment from looking at this, I made that decisión on my own to compare 1963 with an average period, rather than putting let's say a chart with let's say five lines on it. You can't tell anything.

Q What is wrong with five lines? A different color for each line?

A It's possible, but very difficult to make comparisons.

Q Do you think it's fair, Professor Dahl, to compare 1963 on your graph on a monthly basis with the volume fluctuations for each of the months, with some graph that you have created for five years on an average basis? Do you find that fair?

A I find it fair, counselor.

Q All right. You have answered my question. Isn't the reason that you did this is so that you could show some great variation in 1963 figures from what you would have as an average figure, which didn't include ups and -- peaks anv valleys; isn't that why you made the comparison on the basis you did?

A I simply drew the graph to compare 1963 with previous years.

Q But you didn't compare them with previous years, you compared them with the average of previous years, isn't that right?

A Yes, it is.

Q Now,let's turn to the year 1963. With respect to 1963 you took an extraordinary figure, did you

elr Dahl-cross [608]

not, for the month of November, 1963?

A The month of November does include the contracts that were closed out on November 20 by directive of the New York Product Exchange. All contracts outstanding were liquidated at that time.

Q Would you call that the normal trade that goes on on a commodities future market which had gone on in the prior months and which had gone on in the five previous years?

A No, I wouldn't.

Q But you included that month in the graph andyou included those contracts as well?

A I took the data as published.

Q And you did not exclude the contracts that were liquidated by order of the New York Produce Exchange in November, 1963?

A No. The data was used as published.

Q And so you compared free and voluntary trades with forced trades for thatmonth, and for the five years?

A Yes. In November you have that included in the volume figures.

Q You said that you compared published figures.

elr Dahl-cross [609]

Where was the quantity of trades published with respect to the volume that was liquidated or cancelled out by order of the produce exchange on November 20, 1963?

A I don't know that the volume that were cancelled out, you know, by liquidation was published. But the volume figures are published in the in the commodity futures statistics.

Q But you don't know where they are published or how they are published?

A Commodity futures statistics?

Q For the month of November 1963.

A To the bestof my knowledge, the information that I used there was published in commodity futures statistics.

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Q Was that done in some footnote someplace?

A There is a footnote, counselor, to this table which refers to the number of contracts that were closed out on the New York Produce Exchange.

THE COURT: I think you misunderstood. He has asked you where the statistics were published that you are referring to. The Commodity Exchange statistics you said were published for November. Where were they published?

THE WITNESS: They were published in the Commodity Futures statistics.

THE COURT: Who publishes that?

THE WITNESS: The Commodity Exchange Authority.

THE COURT: I think that is the question he asked.

Q Were the CEA publication of those November figures contained in a footnote, to your knowledge?

A I don't believe so

Q Turn please to Exhibit 123-A for identification; that is the size of the open interest.

THE COURT: You want 123 or 123-A, Mr. O'Donnell?

MR. O'DONNELL: Both, your Honor.

Q -- before I turn to those exhibits, could I show you with respect to your last answer, a document of the Commodity Exchange Authority entitled Commodity Future Statistics, July, 1963-June 1964 with respect to volume of trading.

elrf 3 Dahl-cross

Exhibits 123 and 123-A for identification, there you have prepared a graph with respect to the size of the open interest on a monthly or mid-monthly basis for 1963, have you not, on your graph?

A Yes. Actually, the graph that I drew only looked at the month end open interest. 123 shows both the mid-month and the month end. I thought it would -- I didn't see any substantial changes there, I thought I would report the month end.

Q Again, you compared, did you not, apples and oranges by comparing 1963 on a monthly basis with three years prior to thereto where you took the average again and created the figure of an average for 1960, 1961 and 1962, is that not right, sir?

A I don't think I comapred apples with oranges. It was simply my judgment that comparing 1963 with an average of the three previous years was a better comparison, better way of looking at it. That is my judgment.

Q This time to make that comparison you would have only had to have four lines on your comparison because you were only comparing 1960 through 1963?

A Yes.

Q And again, by taking an average you have smoothed out the peaks and valleys for the years 1960 through 1962,

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elrf 4 Dahl-cross

have you not?

A An average obviously tends to do that.

Q Not only tends to do it, it does do it, doesn't it?

A Yes. I would say it is just like, you know, as we look at -- may I make an analogy --

Q Not for me, but perhaps for somebody else.

A Okay.

THE COURT: Professor Dahl, you may explain your answers. You are here, you can explain if you feel it is necessary, to give a full answer.

THE WITNESS: I simply want to make the point, I am an economist, I work in agriculture. And we very often use averages in comparing one year with another. I can pick up piece after piece of information put out by the United States Department of Agriculture, and we will -- let's say we are looking at wheat production. Wheat production very substantially from year to year, you very often see 1965 to 1969 average, and then we will have the last year to compare this with.

It is very commonly used. But I do accept the fact that an average does not show all variations either.

Q You were not preparing these graphs to show cotton-seed oil production, were you?

A No.

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AFTERNOON SESSION

2:00 p.m.

(In open court, jury present.)

REYNOLD P. DAHL, resumed the stand and testified further as follows:

MR. O'DONNELL: May I proceed, your Honor?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. O'DONNELL: (Continued)

Q Professor Dahl, just before the recess we were about to turn to Exhibits 126 and 126-A for identification. Those are charts or graphs dealing with ex-pits.

Do you have those before you, sir?

A Yes. 126, yes.

Q Do you have both 126 and 126-A before you?

A Yes, I have those. There are two charts.

Q With respect to Exhibit 126, do you know who compiled the information that appears on that schedule? You didn't, did you, sir?

A No, I didn't.

THE COURT: I thought we agreed he hasn't compiled any of those exhibits.

Q You got this from the plaintiff's attorneys, is that right?

A Yes, I did.

Q "This" meaning a record, Exhibit 126 for identification.

So that all you did with respect to Exhibit 126, if I follow you, is take the information that appears here and put it in graph form?

A First I looked at the data to make the relevant comparisons and I drew graphs, yes.

Q Did you do the actual drawing of the graphs or did you get somebody else to do that?

A No, I drew the actual graphs myself and then someone else put them on the transparency.

Q This time you compared 1962 ex-pit transactions on a monthly basis, did you --

A Yes.

Q -- with each of the years 1961 and 1962?

A Yes, I did. On the monthly chart I did that.

Q On Exhibit 126-B for identification you did that, did you?

A Yes.

Q This time you didn't take an average of 1961 and 1962?

A No, I didn't. I used --

Q Do you have three symbols on your graph, do you

for each of the three years?

A Yes.

Q Does that make this graph confusing, to have each year on the graph?

A Here again, in my opinion this was judgment because I felt that two years' data did not -- was not very meaningful for an average. If you have got five years' data or certainly at least three years data, you can get an average that is perhaps more meaningful than if I take an average of two years.

Q So that --

A So I thought in this case I could put the two lines for 1961 and '62 on this graph and compare them with 1963.

Q So this time it was not confusing to have each year on the graph, each of the three years?

A Well, I don't think that it was a matter of whether it was confusing or not. I think it was a matter of two years' data is not very sufficient to calculate an average.

Q All right.

Remember back on that first chart that we looked at this morning you did take an average for the five years.

Do you recall that?

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A [illegible]

Q Do you recall that on the exhibit, 122, the figures that you had supplied to you for purposes of preparing that graph went back for six years, didn't they?

A Yes.

Q But you took an average for five years rather than six years?

A Yes, I did that.

Q You know that 1957, the year that you didn't include, had considerable volume, too, did you not?

A Well, the -- here again I would say -- when you say, "considerable volume," in some months, yes.

Q All right. That is all I'm asking.

Going back to ex-pits, did you tell us this morning that the ex-pit information that appears on Exhibit 126 for identification was published by the Commodity Exchange Authority?

A No, I didn't.

Q Did you say it was published by the New York Produce Exchange?

A No, I didn't. I don't believe I said that it was published by the New York Produce Exchange. If I did, I was in error.

Q It wasn't published by either the Commodity

Exchange Authority or the Produce Exchange; is that right?

A That's right.

Q All right.

You know that ex-pit transactions of the type that you described for us this morning are allowed by the Commodity Exchange Act; do you not?

A Yes.

Q You know that they are provided for and permitted by the rules of the New York Produce Exchange and were back in 1963?

A Yes.

Q And you know that those rules and regulations for conduct on the New York Produce Exchange with respect to ex-pits were reviewed, the rules, by the Commodity Exchange Authority; do you not?

A Yes. The Commodity Exchange Authority required information on ex-pits.

Q Generally speaking, all the rules and regulations of the New York Produce Exchange as a contract market, all its rules and regulations and bylaws are submitted to the Commodity Exchange Authority and on file with it so it can look at them; is that not so?

A That is correct.

Q Do you know that the New York Produce Exchange

ex-pit transactions?

A No, they didn't.

Q Are there legitimate reasons for ex-pit transactions increasing in volume on an exchange?

A There are legitimate -- certainly legitimate reasons for ex-pit transactions.

Q That's all I'm asking you.

A Okay.

Q Let's turn to Exhibit 124 for identification.

That shows, does it not, that the commitments of traders in cottonseed oil futures month to month from January to October 1963 broken down by large traders and small traders on the long and the short side of the market?

A Right, and the large traders are further subdivided into large hedgers and large speculators.

Q With respect to that chart, you again were furnished it by the plaintiff's attorneys, were you?

A Yes. This chart was given to me by the plaintiff's attorneys and it came out of the commodity futures statistics.

Q Did you prepare a graph, Exhibit 124A, with respect to this chart?

A Yes, I did.

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gr4 Dahl-cross

Q With respect to this chart and the graph, it is correct, is it not, that the Commodity Exchange Authority does not publish who the large traders are, who the small traders are, who the small traders are, who the speculators are and who the hedgers are?

A That's correct.

2a

elrl Dahl-cross [625]

Q And the reason that is not published by the Commodity Exchange Authority or by anybody else is because that is the confidential information, the secret information that each trader keeps to himself is that not so?

A Yes.

Q Those statistics are still published, are they not, with respect to various commodities by the Commodity Exchange Authority?

A Yes, they are.

Q So you can find this information every day with respect to the -- or every month with respect to the Minneapolis Exchange, can you not, that you are a director of?

A Yes, all contract markets, this information is published on. I happen to get the report, counselor, in my office. That have -- well, this is irrelevant.

Q But as a director of the Minneapolis Grain Exchange, you don't know when you get this report, who the speculative longs are in your exchanges, who the specilative shorts are, and who the hedgers are?

A No.

Q And you don't know how many fall into each category, do you?

A No.

Q You don't know whether there are a good many or a few, or what the story is, based upon this information?

A No. Based upon this information, no.

Q With respect to Exhibit 125 for identification you prepared a graph with respect to information that was furnished you on Exhibit 125, have you?

A Yes.

Q This has to do with the number of contracts settled by delivery as compared to the size of the open interest, is that right?

A Yes.

Q And this time Exhibit 125 has the six delivery months of 1963, the contracts settled by delivery, the open interest on the first notice day, and the delivery as a per cent of open interest, is that right?

A Yes.

Q Does your graph with respect to the years 1960, 1961 and 1962 give us an average figure for those years, or year by year?

A That is just a year by year figure. It's just a line graph that connects the three years.

elr3 Dahl-cross [627]

Q So that this time we have got four years on the chart without the chart being confusing; you are comparing it year by year, is that right?

A Yes, I am comparing it year by year, simply connecting one year with the next.

Q With respect to the contracts settled by delivery for each of those months, how long does it take the Commodity Exchange Authority to provide the information following the end of the month as to how many contracts were delivered, satisfied by delivery in that month?

A I couldn't exactly say how long it takes.

Q You get them in the mail regularly, do you not?

A Yes. Well, the one I get --

Q How much behind are they?

A The report I get in the mail is this commitments of traders.

Q Don't you get any --

A And I think the contracts settled by delivery, I believe the Commodity Exchange Authority gets that information, but also this information is a part of the exchange records too and is available to the members, isn't it?

elr4 Dahl-cross [628]

Q Does this information about contracts settled by delivery get published anyplace?

A Yes, this is published in the commodity futures statsistics which is an annual publication which is compiled from monthly and daily, and monthly reports to the Commodity Exchange Authority has.

Q With respect to deliveries in a given month, let's take the first contract month, March, how long does it take after the delivery of the oil to satisfy the contract? How long is it before that gets published for the benefit of the trade?

A I couldn't say exactly how long it takes the Commodity Exchange Authority to publish this data. Hoever --

Q That is all I am asking. Did you --

MR. BERNFELD: Your Honor, may he finish his answer?

THE COURT: I think so, yes.

Q Did --

THE COURT: Mr. O'Donnell, he may finish his answer.

MR. O'DONNELL: I'm sorry, sir.

A I was simply going to say, however, this is a part of the exchange records and all the traders know

the contracts settled by actual delivery and they don't have to wait for the CEA reports to get that information.

Q You say all the traders know this information without waiting for the CEA to publish it? Is that what you are telling me?

A Well, the CEA publishes this data and -- I tell you why I am a little bit confused in this now, because there's been recently a change.

Q I'm talking about 1963.

A In 1963 the CEA published this data on a daily basis, I believe. On, as I said, the open commitments, the volume of trading, and contracts settled by delivery.

Q So when delivery takes place in satisfaction of a contract on your exchange, you know it as a director, the next day?

A As a director, I'm not down there every day, but certainly the people who are in the market would know.

Q Where would you get your information as a director? You wait for the publication, would you, the statistical bulletin?

A The statistical bulletin, and when I am down on the market, very often I look at this data, if I happen

to be on the floor. But I'm not a trading --

Q Are directors of commodity exchanges supposed to be on the floor every day looking at deliveries?

A Well, I don't know that all directors are supposed to be in the floor every day looking at deliveries. However, there is, as you know, the committee structure of these markets has what is known as business conduct committee, which is really an arm of the directors, and it's up to the business conduct committee to watch these reports.

Q How often are you on the floor of the Minneapolis Grain Exchange during the course of a year?

A During the course of the year I go down to the floor, we have one meeting a month; I would say on the average I might go on to the floor a couple of times in addition to the time I am down there for a board meeting.

Q So those are the times when you might observe something about delivery?

A That's right. Me personally.

Q The other times you observe it is when you got a statistical bulletin from the Commodity Exchange Authority?

elr7 Dahl-cross [631]

A That's right.

THE COURT: Did I understand you to say that this bulletin came out annually, the statistical bulletin that you are referring to? Is that published annually?

THE WITNESS: Yes, your Honor --

THE COURT: You know what I am talking about?

THE WITNESS: Well, this was --

THE COURT: I just want to know whether it is an annual or not.

THE WINTESS: It is an annual bulletin which the counselor just gave me here. This is the annual publication. However, this is compiled from daily and monthly reports of the Commodity Exchange Authority, and the annual bulletin of course doesn't come out until several months after.

THE COURT: That answers my question.

elrf 3 Dahl-cross [634]

regarding the market?

A I really don't know -- could you be more specific with conditions? What do you mean by conditions?

Q I am just asking you whether you made any examination into what the conditions of the cottonseed oil market was at that time with respect to Allied Crude Vegetable, Ira Haupt, or anything else?

A No, the evidence that I have is essentially based on the material I have before me.

Q Did you know that in the fall of 1963 the rumor mill, the grapevine had it that Allied Crude & Vegetable was in the position of making largescale sales of cottonseed oil to the foreign trade; Spain or Russia or other countries?

A It seems to me I have read that there were some rumors to this effect, but I don't know the details of it.

Q And did you know that Ira Haupt and Allied were informing the Commodity Exchange Authority and the New York Produce Exchange in the fall of 1963 that they were in a hedging position with respect to their contracts on the New York Produce Exchange?

A I think the distribution of the commitments of traders shows this to be evident.

Q That they were in a hedging position. I'm not

asking you that, sir. I am asking whether you know that they told the New York Produce Exchange or the Commodity Exchange Authority that they were in a hedging position.

A I don't know. I can only judge from the basis of the commitment of traders' records.

Q You think now they were in a hedging position in the fall of 1963?

A They were reporting a hedging position, evidently.

Q You told us this morning, I believe, Professor Dahl, that the Clearing Association comes under the Board of Directors of the New York Produce Exchange? You didn't mean to say that, did you?

A No, I didn't mean to say it in that way. They are separate corporations with a separate board of directors. I meant it came under the Board of Directors of the Commodity Exchange only with regard to market surveillance.

Q Do you have a Clearing Association on your Minneapolis Exchange?

A Yes.

Q Are you a member of it?

A No, I'm not.

Q Is it independent of your organization?

A Yes. But we are responsible for market

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elrf 6 Dahl-cross

Q And was that an obligation of the Commodity Exchange Authority in the fall of 1963, to see that the conditions of the market were orderly, throughout the fall of 1963?

A Yes.

Q Are you familiar with a principle known as "Know your customer"? Is that a principle that you have heard or teach?

A Yes, I have heard of that principle.

Q What does that principle mean to you? Does it mean that the member is supposed to know the customer he is doing business with?

A Yes.

Q He is supposed to pay attention to what that customer is doing, is he not?

A Yes.

Q You also referred to a deliverable supply of oil, if I have the right words; do you recall that?

A Yes.

Q Have I got the right words, deliverable supply of oil? You don't mean to imply, when you talk about a deliverable supply of oil, do you, sir, to simply mean oil that is represented by registered warehouse receipts with the New York Produce Exchange, do you?

that evidence to you there was no corner of the market by either Allied or Haupt in November 1963?

A But it isn't --

Q Just answer yes or no.

A Yes.

Q With respect to the charts and graphs that you have prepared there, you say that there are various trends with respect to signals that the Board of Managers should pay attention to, and you don't know whether they did or not. But, in any event, you say that you ought to pay some attention or you would as a member of the Board to the volume of trading, whether it was rising or not, the open interest, whether it was rising or not, the ex-pit transactions, whether they were increasing, and the deliveries and whether they were increasing or not. All of those things you would pay attention to.

Isn't there something else that you would pay attention to, namely, price fluctuation on the market?

A Yes.

Q Wouldn't that be evidence of whether there was some artificial or distorted condition in the market?

A Not only price fluctuation, but the general trend in prices I think is --

Q Have you prepared a chart or a graph with respect

to prices and their fluctuation and trend on the New York Produce Exchange for the fall of 1963 or November 1963?

A No, I haven't.

MR. O'DONNELL: Thank you. That is not all of my cross, your Honor, but all of what I understand I am allowed to do with respect to your instructions.

Thank you, your Honor.

THE COURT: Mr. Fryer, are you next?

MR. FRYER: Yes, your Honor.

THE COURT: Who follows Mr. Fryer?

MR. FRYER: I think Mr. Smith, sir.

CROSS EXAMINATION

BY MR. FRYER:

Q Turning to Plaintiff's Exhibit 122 in evidence, Professor Dahl, I would like to focus your attention on the months of October and November 1963. You will see on that chart there is an increase of some 11, almost 11,000 contracts.

Would you say, sir, that that is a sharp increase?

A Did you say between October and November?

Q Yes, of 1963.

A Yes, it is a sharp increase relative to the other numbers.

Q Right. When should the Board of Managers of

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A Yes, that is right between the October and November increase.

Q Yes, I understand that. Thank you.

A Yes.

Q Turning to your graph, which I think is Exhibit 122-A for identification, isn't it true that the sharp increase between October and November of 1963 virtually pushes your graph off the top of the page?

This is 122-A, sir.

A Wait a minute. I'm getting lost up here. Here it is. It was marked on the other side.

Would you repeat the question. I'm sorry.

Q Yes.

If you will look at the point on your graph on which you graphed this sharp increase between October and November of 1963, doesn't that sharp increase virtually push your graph off the page, sir?

A Well, it doesn't push it off the page with the scale I have here. It goes up, yes.

Q Doesn't it go up about as much as it had gone up the entire rest of the year, sir?

A Well, it depends on what time of the year you are comparing it for.

Q Let's start from the beginning of the year, which

is January, through October.

Isn't the increase from October to November almost as much as the increase of the entire rest of the year?

A Yes, it is.

Q Thank you.

Do you think it is fair to include that increase on this chart when there wasn't anything the Board could have done about it at the time that they learned about that sharp increase, sir?

A I think that we certainly could modify that chart to take that big hump out, if you want to subtract out the contracts that were closed out by rule of the Exchange.

Q It is not just that, sir. Isn't the point also that the Board couldn't have possibly learned of that increase until after it was all over no matter how the increase was made up?

A That is correct.

Q Aren't most of your graphs prepared from all of the data on plaintiff's underlying exhibits except for this graph 122-A, which leaves out the year 1957, which is the year which is on plaintiff's underlying chart 122? Isn't that true, sir?

A Yes. I --

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THE COURT: You better repeat that question. Read it back. I didn't follow it. Apparently Professor Dahl did, but I didn't. Let me hear it again.

Q Isn't it true that virtually every other one of your graph uses all of the data which appear on the plaintiff's charts that you testified that you used as a source for your graph except for chart 122-A; which does not include the year 1957 and which year does appear on Plaintiff's Exhibit 122?

A That is correct. I left off 1957 again as a matter of judgment because of the common way we look at, let's say, five-year averages in comparing one year to a five-year average. That is what I did.

Q Isn't it true that the total volume for 1957 was more than ten per cent higher than the volume in each of the three following years?

A That is correct. 1957 was a year in which the volume was higher in that year than it had been in at least -- yes, in three of the years I used. That is correct, yes.

grl Dahl-cross [646]

Q Turning now to your graph on 25A, which contrasts the futures contracts settled by delivery against the open interest on the first notice day, I ask you if those two figures are readily available to somebody serving on the board of managers of an exchange?

A Certainly the open interest on the first delivery -- the first notice day is available.

We wouldn't know whether to calculate the percentage until you got into the delivery month and the deliveries were made, and then you would calculate that percentage of the contracts with deliveries that were delivered as a percentage on the open interest on the first notice day.

Q I see.

Is that a percentage figure that is reported or published by the CEA?

A Not that I know of.

Q Does any other organization report that particular percentage figure?

A No, except that the exchange does report the deliveries, of course, that were made during the delivery month on a daily basis.

Q The percentage figure that appears on this chart is not reported anywhere?

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A The percentage figure is not reported.

Q Isn't it true that the open interest on the first notice day is much lower than it is at almost any other point in time prior to the first notice day?

A Usually this would be the case because as the delivery month approaches, some people satisfy their contracts by offsetting trades. But also you will find that as you go into the delivery month, not all contracts that are open going into the delivery month are satisfied by delivery.

Very often they are made with offsetting trades.

Q Isn't it true that the open interest figures that are used for this chart are approximately 1?20th of the open interest figures that were used for plaintiff's chart 122? I would ask you to look at the total for the year 1963 on Plaintiff's Exhibit 125 for identification. If you can read to the jury what the figures representing total open interest are.

A You are asking me to compare 123, table 123 with 125, is that it?

Q No. Let's start with Plaintiff's Exhibit 122.

A 122?

open interest figure as it appears on Plaintiff's Exhibit 123?

A Oh, yes.

Q Also on that same point I thought I heard you testify this morning that generally deliveries amounted to only 2 per cent of the open interest.

Am I quoting you accurately, sir?

A I said that only with reference to another futures market. I'm quoting this from recall, recognizing that my percentages might be off just a little bit. But if you look at the -- let's take our biggest futures market in the country today. It's the corner market in the Chicago Board of Trade. There I believe if you will check the deliveries as a percentage of the total open interest going into the delivery month you will find it about 2 per cent.

I might say this: This is typically true of all of our big active markets. Corn, wheat and soybeans are the big ones.

Q I don't quite understand then why for the year 1960, not 1963, not 1962 or '61, but for the year 1960 Plaintiff's Exhibit 125 shows that delivery as a percentage of total open interest amounted to 36 per cent.

elr Dahl-cross [654]

in the month?

A Well, no, my answer would be.

Q And a director like yourself who is not a floor trader and who is not a member of the business conduct committee who rely on the business conduct committee to investigate anything that was out of order with the deliveries and the ex-pits, wouldn't he?

A Of course the business conduct committee is an arm of the director, the board of directors, charged with the responsibility of preventing price manipulations and corners, and this of course is also the full time staff, thatis -- what do you call it, the managing director, and so on works with the business conduct committee to report any suspicious actions and investigate these actions and report such things to the board.

Q You as a non-trader director reply on the permanent staff and on the business conduct committee for that purpose, do you?

A I'd say the answer to that question is yes.

Q Do you know that Harold Vogel was not a trader on the floor of the New York Produce Exchange?

A I'm not familiar with the activity of Mr. Vogel.

Q Do you know that he was not a member of the

elr Dahl-cross [656]

A Transfer from one brokerage house to the next. I see significance in the 6A's only if it may, you see a large volume of these, you may raise some question as to why these were occurring. Was one broker uphappy with his customer and shoving him off to somebody else, or vice versa.

Q Or was there a legitimate reason for some trader wanting to spread his account among several brokers, is that not likewise a reason?

A That could be.

Q And there are legitimate reasons for having 6A ex-pits?

A Yes. If for some reason you were unhappy with your broker, I suppose you could change it.

Q In your graph where you included both the 6A ex-pits and the 6B ex-pits do you total the two together?

A Those are totalled, yes.

Q So your graphing some 49,000 ex-pits in 1963, of which almost 14,000 are 6A ex-pits, is that right?

A Excuse me. Which chart are you referring to?

Q I am referring to schedule 126 for identification which you have, I believe, prepared two graphs.

elr Dahl-cross [658]

A This was -- nobody asked me to do the graphs, it was my idea. I was asked to look over this data and I felt, on the basis of my experience as an educator, that the clearest --

Q I have just asked you. You have answered my question. All right.

A I made the decision and I made the decision as to how the drafts would be drawn on my own.

Q Did you have any other information at the time you were going the graphs, besides these schedules of printed information that were supplied to you by plaintiff's counsel?

A No other information other than my general statistical information, etc., in my office in commodity markets.

Q And the reason you prepared these graphs was to try to show graphically in the most dramatic way that you could some difference between the 1963 market conditions in cottonseed oil and those existing in 19 -- in the five years previously?

A My purpose was to show the difference between 1963 and the previous years and whether or not dramatic is the correct word, I'm really not prepared to say. It is a way of showing it.

elr Dahl-cross [658a]

MR. O'DONNELL: That is all I have on this.

THE COURT: All right, Mr. Bernfeld.

books are in evidence. It is just his graphic portrayal that is being dealt with here. 122 is actually in evidence.

THE COURT: All right.

Q Professor, does the Board of the Commodities Exchange have access to information concerning the positions of individual traders, concerning their regulatory dutues?

A Not directly. But if the Board of Directors of course through its Business Conduct Committee, is suspicious of any improper activity, manipulation, it has full investigative authority. It can go to the clearing house, for example, and request the information on at least the clearing members and their positions. And furthermore, it can go to the actual Exchange members and request their information on market positions.

Q Could it also request this information from the Commodity Exchange Authority?

A They could request the information from the Commodity Exchange Authority, which would not release the information, of course, by names of traders. They would release it by a coded number that they have.

THE COURT: What I want to find out is that you have testified, and I gather it is conceded that much of this data is compiled or the Commodity Exchange Authority has that data. If there were -- I am asking you

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of the jury -- I am contemplating excusing the jury for the day -- give me some idea or ask some questions of this man and let's see where we are going.

I tried to explain to Mr. Harris and you Friday. I want you to have every opportunity to put your theory on, but it does seem to me there has to be some foundation for it. You haven't provided it. That's what the whole problem is. I hoped that we were going to get over that. Now we are right back again. We are right back where we have been.

You wanted the evidence in on the expert's opinion before you have the underlying facts.

MR. BERNFELD: Your Honor, perhaps if we address ourselves to this point: It is our understanding that we have the right to prove what the board of directors of the New York Produce Exchange should have known during 1963 as the year was going on. The information we acknowledge is complex from the viewpoint of a layman. We contend from the viewpoint of a market regulator, of which Professor Dahl is one, the information is not complex but is readily understandable.

However, it takes an expertwitness to take the information and put it into digestible form so a layman can use it. We contend that's what the Federal Rules of

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times at its peak in the fall of 1963 of what it had been -- this in comparison to the average of 1960-62.

Q Turning to your chart which is Exhibit 124A for identification did there come a time when the commitments of large traders on the long side of the market changed significantly in 1963?

A Again, the period where we had the biggest change conforms to the period which I have just mentioned, where we had the big change in the open interest. That took place from the end ofJune to the end of July. The long side of the market held by large hedgers rose from about -- and I am just reading this off my chart now -- roughly 33 or 34 per cent to 66 per cent.

It continued to rise to the point where at the end of October the large reporting hedgers held nearly 90 per cent of the long side of the market.

Q As a market regulator would such a change present a basis for concern to you?

A Of course it is true that you as a market regulator, you may derive some comfort from the fact that you have got hedgers in the market.

However, when you look at the fact that these were large hedgers, I guess that one would have to ask how is this distributed among large hedgers; is the

position held by one trader, is it held by five traders, is it held by ten traders, or whatever the case might be.

THE COURT: Mr. Bernfeld, I think that we are going over ground that we have been over. I think you are asking questions that Professor Dahl is restating in almost the same form that he answered this morning. Let's move someplace so I can find out where you are going.

Q Turning to Exhibit 126 --

THE COURT: Instead of going with the exhibits, ask him the ultimate question you want to ask. Let me find outwhat it is. He's already told us about these indices.

What do you want to ask him?

Q Professor, based upon your review of these various market indicators, have you reached a conclusion whether there came a time in 1963 when there was a duty on the part of the board of the New York Produce Exchange to investigate market conditions in the cottonseed oil futures market?

THE COURT: You can't ask that. You can't ask it that way.

Q Do you have an opinion, Professor Dahl, whether

Association or the New York Produce Exchange would have information that appears on those charts and graphs with respect to Allied Crude & Vegetable.

THE COURT: That is what I understand. That is what has been my understanding too, Professor Dahl. I gather from your testimony that what you are saying, as I understood your testimony, that these people could have gotten the information if they had felt some need to make inquiry. They might have gone to the Authority and gotten the information. But that again, as I have been saying, they don't ordinarily, they couldn't ordinarily do that unless there was something on the market that had them do it.

So what we are saying is the information was available, we are begging the question, because what has to be established is that something triggered it.

Q Was there some market condition in 1963 that would have triggered an inquiry to get the information concerning the percentage of mid-mont and end month open contract held by Allied in 1963?

A I would prefer to go back to my original statement which I said sometime ago, that there were a number of factors that were unusual about this market in the late mid-summer and fall of 1963. I testified that they were: The volume of trading increased sharply, the open

interest rose sharply; a sharp change in the concentration of the open interest on the long side of the market.

I mentioned the contracts settled by delivery, and I mentioned these ex-pit transactions.

Now, these are the signs, in my way of thinking, that perhaps the Exchange had some obligation to look at what was going on in the market.

THE COURT: How many of these signs do you think when they appear would be a danger signal? Any one of them, all of them in combination, two or three of them -- tell me which ones?

THE WITNESS: I would have to testify that no single one of these signs by itself I could point to and say that is it. But you must also remember in this, that the people who were trading in that market, these traders know something about who is doing the trading and what is happening, and if you don't believe it, just go down to the pit of the Chicago Board of Trade and find out. They know who is doing the buying or the selling; or go up to my market and find out.

THE COURT: That statement is contrary to the facts that I thought had been conceded both by you and by everyone, that that was something that was kept secret. If I were a trader, I would certainly, and you and I were trading on the market I wouldn't let you know about

what my position was, and you wouldn't let me know what yours was.

MR. LIMAN: May the record reflect the witness is shaking his head, nodding his head in agreement.

THE WITNESS: Yes, the record would reflect that, that the trader didn't know the positions. However, may I make another statement in addition to this. However, in view of these previous signs that I had pointed to, I still maintain that it is a very easy matter and a responsibility to investigate those conditions that may have been instrumental in causing these changes.

MR. LIMAN: May it please the Court, I think that Professor Dahl has said that he has mentioned all of these things in his testimony before. These are all significant factors. What he is adding now is what I believe is a question of law for your Honor and a question of fact for the jury. He is telling us that these factors impose a duty, and no matter how the question is phrased, that is the only thing additional that the plaintiff wants to put this witness on the stand for; that maybe the Business Conduct Committee or somebody else who had some of these facts would make an inquiry.

And then he said now, and I listened to it very carefully, that not one of these factors alone would

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MR. O'DONNELL: I object to that --

MR. LIMAN: Concern or unusual?

MR. O'DONNELL: I object, your Honor. This witness has made it perfectly plain that he has no information about the market conditions in 1963.

MR. BERNFELD: That is not true, your Honor. He said that these are charts with respect to market conditions. I am asking him now whether there is some combination.

THE COURT: I will overrule the objection. We interpret "concern" not to be of concern of the Board of Managerment, et cetera, but a general climate of the market. All right.

Q Would you respond to that, Professor? Would you like me to rephrase it?

A Yes.

Q With respect to the market conditions which you have described on your chart, is there some combination of these market conditions which demonstrates that at some point in 1963 there was a basis for concern with the general climant of the cottonseed oil futures market?

A I think I have already explained the things that I in my own knowledge would be of concern. I think the charts do show that these changes began to occur

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in the summer of 1963; from the end of June to the end of July, et cetera. And if you examine the date carefully, you will see this is when there were some very substantial changes in the indicators that I have testified that I feel are important ones.

Q Was that information with respect to these indicators available at that time in 1963?

MR. LIMAN: Your Honor, are we going to have to go through what we went through all day today? He tries to get in the back door, they were available. Then Mr. O'Donnell goes on one by one and shows that something was available to the CEA, that was available maybe to a trader, this was on the bulletin board maybe for one day.

We could keep this witness here, and I know your Honor won't permit it, for maybe a month. If he repeats it was availabl , and we have to keep showing that what he has done is combine information that was known to A, that was known to B, with information that was available to nobody, to come up with these indicators.

MR. BERNFELD: But the witness has testified that this information was all available to the Board of Managers, regardless of where the original source was.

THE COURT: He hasn't testified to that, and I haven't understood him to testify to that. I have

information is published, so obviously in order to make comparisons you would have to go into yearbooks going back some years. It seems to me we ought to know and the jury ought to know that what he is saying is those three facts are signs of an unhealthy market; if they are not signs of an unhealthy market, but they are ambiguous signs, he ought to say it. But it is unfair for him to say that those three facts with knowledge of Allied's position or delivery information which may have been posted on a bulletin board one day but which is not available to somebody who sits in an office like you do as a non-trading doer, that to combine all of that really gives a distorted piece of information.

THE COURT: Professor Dahl, assume that is a question. Were those three indices, based upon the volume of the commitment and open interest, would those three indices be in your opinion such that they would show instances of instability, standing alone?

THE WITNESS: Standing alone, I would have to say one would need more emphasis or more data besides those three.

THE COURT: What would you need?

THE WITNESS: There are two other significant elements of information that were not published by the Commodity Exchange Authority but were made available on a daily basis at the Produce Exchange, and one was the

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ex-pits and one was of course the contract settled by delivery. May I finish this point?

THE COURT: Certainly.

THE WITNESS: What I am saying is that the Board of Managers or the other people in the market, whoever they are, have this information, I mean, on a daily basis.

information.

Everybody is trying and everything is being mishmashed together.

THE WITNESS: May I make a comment to that?

THE COURT: Yes.

THE WITNESS: However, it is still true, despite the fact that I sit on a Board of Directors of a market -- we have as a part of our growth structure a Business Conduct Committee and a staff that has the responsibility of checking these things when there looks like "there might be a rat in the woodpile, you better investigate and report back to the Board."

MR. LIMAN: My client, your Honor, wasn't a member of that staff and he wasn't on the Business Conduct Committee and I'm going to be imprisoned in this courtroom for two months in good company but still imprisoned here for two months.

THE COURT: Mr. Liman, no jury is here.

MR. LIMAN: That is not natural with me, your Honor.

THE COURT: No drama.

MR. O'DONNELL: Your Honor, with respect to Mr. Harris' point that this information can be offered at least against the New York Produce Exchange, I submit

THE WITNESS: But certainly when you look at all five and you see some unusual patterns, one might ask some questions.

THE COURT: All right.

THE WITNESS. There may be cases where one could ask some questions by just looking at one or two, you see.

THE COURT: All right.

MR. O'DONNELL: Your Honor, I didn't hear Mr. Bernfeld.

Did he say he rested and this was cross-examination or do I have some voir dire on this portion --

MR. BERNFELD: You heard incorrectly.

THE COURT: Pursuant to what we went through out of the presence of the jury, you may examine. I also think that other counsel may want to examine as well at this point.

MR. O'DONNELL: May I proceed,your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. O'DONNELL:

Q Good morning, Professor Dahl.

A Good morning ,sir.

Q I would like to pursue the Court's questions

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THE COURT: All right.

THE WITNESS: Is that satisfactory?

THE COURT: If it's satisfactory to you, fine.

A May I go on with one more point, counselor, on this?

Q I wish you wouldn't make speeches for me. I haven't a pending question.

MR. BERNFELD: You did indicate you would allow the professor to state why he felt these things exist in combination, your Honor.

THE COURT: I did and I will allow him to illuminate his answer. Go ahead. I told you that you could. Go ahead.

THE WITNESS: Here's why these things sometimes must exist in combination.

We had a situation where we had in 1963 according to I believe what has been submitted here to the Court with regard to the volume of ex-pit transactions which we haven't discussed in detail. These were abnormally high in 1963.

Q What was that --

A The number of ex-pit transactions were abnormally high. They were astronomically high relative

to previous years.

Now, this was interesting because this was occurring at the time the open interest was rising.

Normally when a transaction takes place outside of the pit and there is an exchange for futures for cash, the volume of open interest goes down. Here it was rising. I would ask a question why this was occurring.

Q Did you ask that question in 1963?

A No, I didn't ask that question in 1963.

Q You don't know whether anybody else did, who got an answer, do you?

A Well, I don't know if anyone else asked the question --

Q That is all I am asking --

A I think they may have --

Q I am asking what you know. Do you know if anybody else asked the question?

A No, I don't.

Q Do you stand by this testimony that you gave yesterday, or are you retracting it? And this is the question, at page 711 of the transcript:

"The Court: Professor Dahl, assume that is a question. Were those three indices, based upon the volume of the commitment and open interest, would those indices be, in your opinion, such that they would show instances of instability standing alone?

"The Witness: Standing alone, I would have to say one would need more emphasis for more data besides those three.

"The Court: What would you need?

"The Witness: There are two other significant elements of information that were not published by the Commodity Exchange Authority, but were made available on a

daily basis at the Produce Exchange and one was the ex-pits and one was of course the contracts settled by delivery. May I finish this point?

"The Court: Certainly.

"The Witness: What I am saying is that the board of managers and the other people in the market, whoever they are, had this information, I mean, on a daily basis."

Do you stand by that testimony or are you retracting it this morning?

MR. BERNFELD: Your Honor, may we approach the bench?

THE COURT: No.

MR. BERNFELD: I object.

THE COURT: The objection is overruled.

MR. BERNFELD: May I state the basis for my objection?

THE COURT: I don't want a speech from you.

MR. BERNFELD: I just want to indicate that this material was read from testimony that was given outside the presence of the jury.

THE COURT: That is quite obvious to us all. But Mr. O'Donnell certainly has a right to use it for his purposes.

A I don't retract that testimony, sir, and I don't believe that --

Q That is all I am asking you, whether you stand by it or retract it.

A I don't retract it.

Q Would you please just try to listen to my questions and answer them? Then is it something that you need more, you need some combination more than volume, open interest and concentration among traders to have these warning signs; you need some combination with ex-pits and deliveries, is that what you are telling us?

A I would say yes.

Q With respect to all of this statistical data, all five, all of that information is known to the Commodity Exchange Authority, is it not, sir, contemporaneously?

A It certainly -- yes, it would be known, because the CEA has a person there.

Q They have a person there, they know -- they publish the volume, open interest and distribution among traders of commitments and they are there and they can see whatever the story is on ex-pits and deliveries, is that correct?

elrf 3 Dahl-cross [740]

A That is correct. But the ex-pits did increase very substantially and was a -- the ex-pits were a major factor in the increased volume in 1963.

Q There was virtually no increase, wouldn't you say, with respect to non-ex-pit transactions between '62 and '63?

A In the non-ex-pit transactions there was very little increase. If you subtract those out.

Q And similarly, if you take the year 1961 and subtract out the ex-pit transactions, 6-B ex-pit transactions, which were 504, you then find that you had a good deal greater number of non-ex-pit contracts in 1961 on this Exchange than you had in 1963, namely some 86,000 plus in 1961 as compared to this 79,000 figure in 1963?

A That is correct.

Q With respect to this subject of Exhibit 124, this publication by the Commodity Exchange Authority that breaks out traders by longs and shorts and by large and small, that of course doesn't give the positions of individual traders or their names, that is published by the CEA, as I understand it, only on a monthly basis?

A That is correct.

Q How long after the month is that information supplied?

A I can't tell you exactly, counselor. I get the publication and usually it is within, sometime within a few days after the end of the month that it gets to my office.

Q You know that Ira Haupt, of course, got all of this information also, do you not, from the CEA in 1963?

A I assume it is available to everybody.

Q What do you know about Ira Haupt's reputation in 1963?

A I know very little about the reputation of this firm. In fact, I know --

Q All right. When you get this publication every month from the CEA and you see the hedging position that is set forth, hedging is in the hands of large traders, is a reassuring fact about a market, is it not, sir?

A I would say that is correct.

Q That is all I am asking. You say with respect to the subject of deliveries, I think you told us yesterday that something in the range of two per cent of all futures contracts on an exchange would be satisfied by delivery, that would be a normal range as a general rule on a commodity exchange, is that right?

A I didn't quite say a general rule, but I would say in the biggest markets that we have, deliveries

typically are very small.

Q And in a smaller market deliveries might be larger, particularly in a market where traders in the cash commodity were predominant in the futures market on the exchange?

A Well, I have never studied that question, I really don't know, and some of the smaller markets.

Q With respect to Exhibit 125 that we talked about yesterday, you had these -- in this exhibit for identification you have these percentage figures with respect to delivery as a percentage of open interest on the first notice day; do you recall that?

A Yes.

Q When you were talking about the two per cent and, by the way, you were generous enough to say it might be three per cent and not two per cent.

A You know, this is kind of a ballpart figure, At any rate, it is very low.

Q All right.

With respect to two or three per cent of transactions, you were not talking about two or three per cent of the open interest on the first notice day being satisfied by delivery, were you?

A No, I wasn't.

Q You were talking instead about the per cent of delivery with respect to all of the transactions on the Exchange.

A That is correct.

Q So with respect to these high percentage figures, Exhibit 165 with respect to 1963 and which are also very high with respect to 1960, '61 and '62, that is apples and oranges compared to your two or three per cent figure?

A This is deliveries in the first notice day, the two per cent that I was talking about was not. We would -- to get comparable figures for other markets, you would have to study this separately. I don't know where such

gwrf 2 Dahl-cross [744]

data exists.

Q Did you ever make a computation in all the work that you have done with respect to this case as to what the percentage figure would be with respect to the New York Produce Exchange deliveries in 1962 as a per cent of open interest of transactions on the Exchange?

A I haven't studied the question directly. My impression is that it is high.

Q It is two to three per cent, sir, don't you know that?

A What is two to three per cent?

Q Deliveries in terms of percentage of the transactions, the volume of transactions on the Exchange during the year.

A Deliveries as a percentage of the total number of futures contracts actually entered.

Q Yes. You didn't make that computation? You don't know it is two to three per cent?

A I didn't make that computation directly.

Q You talk about deliveries and this information being available to the Exchange with respect to number of deliveries.

You don't mean the Exchange, do you? You mean the Clearing Association?

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gtl Dahl-cross

Q With respect to the mechanics of the ex-pit transaction, there has to be reported that there has been an exchange of this cash commodity for futures contracts, sometimes as an exchange of futures for physicals?

A Right.

Q That report goes to the Commodity Exchange Authority directly, that there has been an ex-pit transaction by the member of the exchange; does it not?

A It goes to the CEA and also there had -- a letter I believe according to the rules goes to the clearing house.

Q But the Commodity Exchange Authority legislation and rules and regulations requires the member not only to send a letter to the exchange, but to send notice to the Commodity Exchange Authority, the member, not the exchange, notifying the authority of the ex-pit?

A Yes.

Q The CEA does not publish sepaately in any contemporaneous fashion the information that it gets concerning these particular ex-pit transactions?

A Not that I know of.

Q And you don't know of any contemporaneous cumulative collection of that information which is made

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A No, I wasn't here.

MR. BERNFELD: Objection, your Honor. That was a mischaracterization of the testimony.

THE COURT: I am in no position at the present time to recall whether it was or was not. It's for the jury's recollection.

MR. O'DONNELL: Excuse me just one minute, your Honor.

THE COURT: Surely.

(Pause)

Q Are you aware that Haupt reported Allied's position in the fall of 1963 as being a bona fide hedge position?

A Yes, I assume this was the case. As you look at the commitments of trader report.

Q I didn't ask you to assume. I just want to know whether you knew that. Do you know it?

A I know it only from the commitments of traders reports which shows the increased concentration on the long side of the market of the long hedgers. That is the only evidence that I have of this.

Q Do you know that they told this to Mr. Berg, the managing director, in the fall of 1963? Ira Haupt did, the people those fellows at the first table

elr3 Dahl-cross

represent.

A That Haupt told --

Q Mr. Berg, the managing director of the CEA -- of the produce exchange?

A I don't know that directly.

MR. O'DONNELL: Your Honor, I have tried to limit my questions to voir dire type questions. I do have cross-examination in addition, at an appropriate time.

THE COURT: I understand that.

MR. O'DONNELL: Thank you, your Honor.

THE COURT: Mr. Fryer, do you have any questions?

MR. FRYER: I have a very few questions.

CROSS-EXAMINATION

BY MR. FRYER:

Q On ex-pits, Professor Dahl, I understood you to say that the significance of the ex-pit statistics was that ex-pits should reduce the open interest; am I right?

A That's right. If there are exchange of futures for cash, they do reduce the open interest

Q Do they also reduce the open interest, sir?

A It could be that if one of the parties to the

transaction is not hedged, that the open interest would stay the same.

Q Right. So that is one case in which they would reduce the open interest, right?

A Correct.

Q What would happen to the oper. interest if both parties were unhedged befoer teey entered into the ex-pit?

A If both parties are unhedged, and they enter into such a transaction, in my opinion, that is not a bona fide exchange of futures for cash.

Q I don't understand that, sir. Assume that my client, Bunge, owns a tank car, one tank car of oil; and it needs it several months hence. And since it thinks the price is going up it has not hedged that one tank car. Assume somebody like Proctor & Gamble thinks the price is going down; it needs desperately one tank car of oil within one month's time; it is unhedged. Can't Bunge and Proctor & Gamble enter into a transaction whereby Bunge sells the tank car of oil to Proctor & Gamble now, but since Bunge is going to need that oil in several months and they think the price is going up, can't Bunge go along in the futures market and can't Proctor & Gamble , which thinks

elr5 Dahl-cross

the price is going down, simultaneously go short?

Are you saying that is not a proper ex-pit, sir?

A Not in any understanding of an ex-pit transaction, but it's not an exchange of futures for cash. They aer not exchanging futures for the cash commodity.

Q Do you have a copy of the rules of the New York Produce Exchange with you, sir?

A Yes, I do. That is listed under so-called ex-ring trading rules.

Q Isn't it true in the case that I gave you Bunge was giving up cash oil for a futures contract, sir? Isn't that exactly what happened there? Wasn't that an exchange of cash for a future?

A No, it was not. If that was -- they weren't giving up the cash right at that time, the cash commodity. Under that type of a transaction you describe, I think that should be made in the pit .

Q Maybe I didn't make myself clear. I was hypothesizing a sale right then. Proctor & Gamble wants the oil, it needs the oil, and Bunge sells them the oil on the spot. But since Bunge itself is going to need that quantity of oil in a couple of months, Bunge goes along, so Bunge is exchanging the cash oil now against a futures contract three months hence.

A But what hapens to the other party? Are they giving up a future?

Q They are simultaneously going short.

A Well, my understanding of a change of futures for cash, that would not -- in fact, I know that wouldn't be allowed under the rules of other commodity markets. I'm not so sure whether or not that was the case here. But normally when you have an exchange of futures for cash each party gives up the future and its exchange for his cash commodity. It usually takes place between one of the others, both of them are hedged.

Q Have you ever participated in an ex-pit transaction, sir?

A No, I haven't.

Q Have you ever participated in the sale of any cash oil or cash grain?

A No, I haven't.

4b am elrf 1 Dahl-cross [758]

Q I would like you to look at Rule 6-B and explain to me what language there is there that leads you to conclude that the transaction that I hypothesized is not right within the terms of that rule?

A I will read this rule. It says, "Trades made in connection wizh cash fats, oils and oil seeds transactions or exchanges of futures contracts for cash fats and oils and oil seeds" --

Q Didn't it say "or"?

A Yes.

Q Doesn't the transaction that I hypothesized to you fall within the first half of that rule?

A That may well be, that that was allowed under this when it says "Transactions made in connection with cash fats, oils and oil seeds," under the rules as stated. This rule is unique to me. I know of no other commodity where it is stated like that.

Q This is the particular market that we are dealing with here, we are not dealing with a grain or silver, we are dealing with cottonseed oil; just so we are clear, do I understand you to say that the transaction that I hypothesized would be proper under this rule?

A I would guess that that would -- may well come under the rule.

elrf 2 Dahl-cross

Q Thank you, sir. And what would be the effect on the open interest of such an ex-pit transaction?

A The open interest would rise.

Q Right.

A Thank you.

Q Tell me if I accurately sum up what you have said.

In one case when both parties are unhedged the open interest would rise. In a second case --

A Pardon?

What was that?

Q In the case where both parties to the ex-pit are unhedged as they go into the ex-pit, the open interest would rise, right?

A Yes.

Q In the second case in which one party to the ex-pit and one party only is hedged, the open interest would stay the same, right?

A Correct. If one party is hedged.

Q Right.

Only in the third case, in which both parties are hedged were you right when you said that the open interest would decrease, right?

A That is correct.

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elrf 3 Dahl-cross

Q Do you have any idea how many of these ex-pit transactions in 1963 on the New York Produce Exchange fell into which of the three categories I have just talked about?

A Well, I would guess, since the open interest was rising during this period, and that we had ex-pits being a substantial portion of the volume, that the transactions were of a nature where neither party was hedged and they were taking a transaction in cash and a transaction in futures outside of the pit, and I, for the life of me can't see how this can be justified.

Q Did you understand how the hypothetical transaction between Bunge and Proctor & Gamble could have been justified, sir?

A I understood it, yes.

Q Have you looked at any of the ex-pit transactions in 1963 for the purpose of finding out whether or not they were justified?

A I have not looked at any of them, any specific ex-pit transactions.

Q So then you really can't say whether or not there was even a single one of them that was justified or not justified, sir?

A I can't say -- transactions made in connection

elrf 4 Dahl-cross

with cash fats, oils or oil seed is a pretty broad rule.

Q I didn't ask you that, sir. I asked you whether as you sit here now you can say whether there was one single ex-pit in 1963 that was not justified?

A From what I have seen, I can't say that, at this stage. I haven't examined the evidence.

Q And weren't you also wrong when you testified earlier in response to Mr. Bernfeld that the significance of ex-pits is that they tend to decreas the open interest? Weren't you wrong about that, sir?

A They would decrease the open interest if it was exchanges of futures for cash; right. If the transactions made in connection with cash commodities --

Q I understood you to tell Mr. Bernfeld that the significance of ex-pits was that they would decrease the open interest. I understood you to tell me that they would increase the open interest, am I not right?

A I believe I mentioned that -- I said that we had increased ex-pit transactions, or ex-pit transactions normally tend to reduce the open interest or at best keep it constant. But these transactions under the first part of that, if allowed, may well increase it.

Q So you were wrong then when you told Mr. Bernfeld that the significance of ex-pits was that they would decrease

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the open interest?

A That is what happens in most markets.

Q You were wrong about this particular market, sir, right?

THE COURT: Mr. Fryer, you have made your point.

MR. FRYER: I am finished, your Honor, thank you.

THE COURT: Mr. Minnerop or Mr. Smith?

MR. MINNEROP: I have no questions.

MR. SMITH: I have very few, your Honor.

CROSS EXAMINATION

BY MR. SMITH:

Q I just want to be clear, Professor, in light of your testimony this morning. You are not changing what you told me yesterday, are you, that the deliveries and the ex-pits are available on the bulletin board of the Exchange floor?

A No.

Q You are not changing that testimony?

A No.

Q And you are not changing your testimony that they are not available to a non-trader director like yourself except when he happens to go on the floor and see the bulletin board?

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gwrf 5a am 1 Dahl-redirect

MR. BERNFELD: Your Honor, we offer Plaintiff's Exhibits 124, 125, 126 and the transparencies marked 122-A, 123-A, 124-A, 125-A, 125-B, 126-D and 126-E.

MR. SMITH: Objection, your Honor.

THE COURT: All of the A marked exhibits, the motion is denied.

124 is admitted, 125 is admitted, 126 is admitted only in respect of the New York Produce Exchange.

MR. O'DONNELL: Which one as to the New York Produce Exchange?

THE COURT: The last one, 126 only.

MR. SMITH: Your Honor, may I request the same limitation as to Exhibit 125? I believe the testimony --

THE COURT: What is 125?

MR. O'DONNELL: Your Honor --

THE COURT: Wait, gentlemen. I will hear all of you.

125, isn't the indication on the source?

MR. SMITH: The source written on the document is Annual Bulletins, your Honor. The testimony is that to find it contemporaneously you have to go on the floor.

MR. O'DONNELL: This is the figure with the percentages that are not found any place, your Honor, which I think the testimony has demonstrated --

been available only to the New York Produce Exchange, based upon the present record.

So that at the present time in viewing these, that is in 122, 123, 124, 125 and 126, since they have could be viewed in combination, you can only look at this evidence in its totality as against the New York Produce Exchange at this time.

One thing more. I think I have indicated to you these illustrations and charts, et cetera, that you see and receive and look at, is like any other evidence. You are to evaluate it based upon what you heard in the courtroom and based upon your examination of the record and understanding.

(Pause.)

Q Professor Dahl, I ask you to turn to Plaintiff's Exhibit 122 in evidence, the monthly volume of trading in cottonseed oil futures, 1957 to 1963.

Do you recall Mr. O'Donnell's questions which compare the volume of trading in 1963 to 1962?

A Yes.

Q Do you recall specifically that he asked you to subtract out 11,000 November contracts and 35,000 type 6-B ex-pits from the 1963 monthly volume?

A Yes.

Q Do you recall that Mr. O'Donnell pointed out that when you subtracted out these two figures, that the resulting figure very closely resembled the 1962 volume?

A Yes.

Q Do you have an opinion whether it is unusual for a market to experience an increase in trading volume of some 35,000 contracts, putting aside the 11,000 for November, which are constituted almost wholely as a result of ex-pit transactions?

MR. O'DONNELL: Objection, your Honor.

MR. SMITH: Objection as to our client, your Honor. That information is not admitted against us.

MR. MINNEROP: Same objection as to my client, your Honor.

MR. FRYER: I have the same objection, your Honor.

MR. O'DONNELL: There is no foundation, your Honor, that this witness could have an opinion with respect to the events of 1963 on the basis of this fact alone.

THE COURT: I am going to allow him to answer the question, but I think I have already given instructions to the jury in regard to it in any event, so that the other objects, I think the jury understands how they are supposed to view the evidence. I am going to allow him to answer

elrf 4 Dahl-redirect

the question.

MR. BERNFELD: May I ask the reporter to read back the question?

THE COURT: The question is simple enough. You keep it in mind, Professor Dahl has the question in mind, did he have an opinion as to whether or not that volume was unusual.

THE WITNESS: I believe I testified yesterday that ex-pit transactions are allowed as exceptions to the trading rule.

THE COURT: Professor, I would appreciate it, I think we have that clear, we understand that. I would appreciate it if you would direct yourself to the specific question:

In your opinion was that volume unusual. The answer is yes or no.

Q The increase in volume, the 35,000 increase in volume as a result of ex-pit transactions, was that increase unusual?

A Yes.

Q Turn to Exhibit 123, the size of the open interest in cottonseed oil futures contracts at mid-month and month end, January, 1960 to December, 1963.

Do you have an opinion whether increasing open

interest in the face of 35,000 type 6-B ex-pit transactions in 1963 was unusual?

MR. O'DONNELL: I object to that, your Honor. I don't know what "in the face of" means.

MR. FRYER: Your Honor, I also--

THE COURT: Mr. Fryer, I expected you to object first. In any event, the objections are overruled. You may answer the question.

A Yes.

Q Turning now to Plaintiff's Exhibit 124 in evidence, commitments of traders in cottonseed oil futures; I call your attention, Professor, to the figure at the end of March, 1963 for the number of contracts held on the long side of the market by large hedgers; do you see that figure, 624?

A Yes.

BY MR. BERNFELD:

Q I next call your attention to the figure for contracts held by large hedgers on the long side of the market at the end of July, 4,384.

Do you see that figure?

A Yes.

Q Do you have an opinion whether that increase from 624 at the end of March to 4,384 at the end of July represented a sharp increase in the size of the open position in the hands of large hedgers?

A Yes, I would call that a sharp increase.

Q I next call your attention to the large hedger figure for the month of June, 1,382 contracts, and then to the figure for July once more, 4,384 contracts.

Do you have an opinion whether an increase in the number of contracts held by large hedgers on the long side of the market from approximately 1,400 contracts in the month of June to approximately 4,400 contracts at the end of the month of June represented a sharp increase for a one-month period?

MR. O'DONNELL: I object to all of this, your Honor. With respect to sharp increases, the figures are here. They are in an exhibit in evidence. They speak for themselves, what is sharp, dull or in between.

gwrf 2 Dahl-redirect [787]

THE COURT: I thought we were supposed to be --

MR. BERNFELD: Those figures were calculated by Professor Dahl on his exhibit which is 124-A marked for identification. I have no other means of asking the question since we don't have the calculations in evidence. There are percentages calculated.

THE COURT: All right. You may answer the question yes or no.

A Sizable increase.

Q Turning next to Plaintiff's Exhibit 125 in evidence, cottonseed oil futures contracts settled by delivery as compared to the size of open interest on the first notice day. I call your attention to the March contract month, the first one for the year listed on the chart.

Do you see the figure that states that 85 per cent of the contracts open on the first notice day of the March contract month in 1963 were settled by delivery?

A Yes.

Q Do you see the figure next to it for 1962 --

A Yes.

Q -- where it states that 36 per cent of the contracts in that contract month in 1962 were settled for delivery?

A Yes.

gwrf 3 Dahl-redirect

Q Do you have an opinion whether the increase from 36 per cent in 1962 to 85 per cent in 1963 was a sharp increase from one year compared to the next?

A Yes. It is more than double.

Q I turn next to the second contract month for the year 1963, the May contract month, and I call your attention to the statistic which indicates that 87 per cent of the contracts open on the first notice day were settled by delivery, and then to the figure for 1962, which is 38 per cent --

THE COURT: Mr. Bernfeld, I am not going to allow you to ask him a question about each of these months.

MR. BERNFELD: I only intended to ask him with respect to the first two months of the year, your Honor.

THE COURT: All right, fine.

Q Do you consider this increase from 38 per cent to 87 per cent a substantial increase?

A Yes.

Q I would ask you to turn next to Plaintiff's Exhibit 126 in evidence, monthly volume of cottonseed oil contracts, ex-pit transactions, for the years 1961 to 1963.

Would you turn to the middle column entitled "Type 6-B Ex-Pit Transactions."

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Do you note at the bottom of the column for 1961 there is indicated a total of 504 type 6-B ex-pit transactions for that year?

A Yes.

Q Do you further note that at the bottom of the column for 1962 there is indicated 434 type 6-B ex-pit transactions for the year 1962?

A Yes.

Q Do you further note that there was 35,438 type 6-B ex-pit transactions for the year 1963?

A Yes.

Q Was this the figure to which you were earlier referred to as an astronomical increase?

A It certainly is a very sizable increase or astronomical. It is relative to the other years.

Q Turning to the top of that column, type 6-B ex-pits, I call your attention to the month of February 1963.

Do you note that there were 940 type 6-B ex-pits in the month of February 1963?

A Yes.

Q Then in the month of April do you note there were more than 1800 type 6-B ex-pits?

A Yes.

Q Then again during the months of June and July 1963 more than 2,500 and more than 4,000 ex-pits in each of those months respectively?

A Yes.

Q Professor, based upon the information before you on Exhibits 122 through 126, including monthly volume of trading, size of open interest, commitments of traders, deliveries and monthly volume of ex-pit, do you have an opinion whether there was an unusual condition prevailing on the cottonseed oil futures market in 1963?

MR. SMITH: I respectfully move for the limiting instruction here, your Honor. I think it should be made clear with respect to this ultimate question, it is only as against one defendant.

THE COURT: I think you understand that, don't you, now? We are dealing with these exhibits. All five of the factors have to be present, and, therefore, the ultimate question, whatever the answer is, you take only in respect at this point in the trial as to the New York Produce Exchange. Is that clear? I will go over it again if it isn't clear.

All right.

Q Do you recall the question, Professor? Would you like me to restate it?

determine with whom he will do business and how much collateral or margin or financial protection he will demand from his customer before doing business on his behalf?

A Yes, provided he conforms with the exchange rules on the minimums.

Q Right.

Would you agree with me, Professor Dahl, that a contract market, such as the New York Produce Exchange in 1963, is an exchange designated by the Secretary of Agriculture and must submit all of its charter provisions, by law provisions, rules and regulations to the Commodity Exchange Authority under the Secretary of Agriculture?

A Yes.

Q Would you agree with me that the Commodity Exchange Authority may review those rules and regulations and inform the exchange if it disapproves of any of them?

A Yes.

Q That would apply to ex-pit rules or any other rules, correct?

A Correct.

Q Would you agree also with me that under the Commodity Exchange Act the Secretary of Agriculture

can take measures, the Commodity Exchange Authority had to take measures, if he has reason to believe that any person is violating or has violated the Act or is attempting to corner or manipulate the market in any way?

A Yes.

Q Would you agree with me that the Commodity Exchange Authority also directly supervises futures commission merchants, stockbrokers and traders with respect to futures contracts?

A Yes.

Q And that those persons, namely, futures commission merchants, floor brokers and traders report directly tothe Commodity Exchange Authority on their transactions?

A Yes, if they are large traders.

Q Above 25 contracts?

A Above 25 contracts.

Q Yes. Would you agree with me that the most closely guarded secret with respect to commodities futures transactions and those on the New York Produce Exchange in 1963 are the names of the traders that the members are trading on behalf of and what the position of those tradersare, the individual positions?

gr Dahl-recross [798]

A That's secret to other members.

Q And known only to the Commodity Exchange Authority; isn't that correct?

A Yes.

Q And not known to the New York Produce Exchange and not known to the clearing association, and the whole framework of the statute and the regulating is so structured?

A Yes.

Q Would you agree with me also, Professor Dahl, that the brokers, such as Ira Haupt, are required by law, Commodity Exchange Law, to inform the Commodity Exchange Authority with respect to trades involving traders holding more than 25 contracts, whether those trades involve speculative transactions or hedging transactions? They have to tell that to the CEA; do they not?

A Yes.

Q That's the basis on which the CEA prepares that schedule that we will come to?

A Yes.

Q Would you agree with me that there is nothing in the Commodity Exchange Authority, legislation, that limits in any way the number of transactions that there is on an exchange at any time, and I'm speaking

elr Dahl-recross [803]

only stick with the three years, 1960, '61 and '62, they are very high percentage figures, isn't that so? At least in ratio to your 2 to 3 per cent?

A These are the contracts, of course, that are open going into the delivery month.

Q All right.

Now, your 2 to 3 per cent figure, you have told us, related to all the contracts and transactions; it's a per cent -- a percentage of all the transactions?

A Yes.

Q For the year.

Did you since I was last before you try to make any computation as to what the per cent of delivery was in terms of all of the transactions on the exchange?

A No, I didn't make that computation.

Q If we take all of the contracts which appear in that exhibit 122, even including the 11,000 cancelled on November 20, 1973, that gives you this figures of 126,235 that appears on Exhibit 122; do you see that?

A Yes.

Q And if you take on Exhibit 125 the total contracts settled by delivery for the year in 1963, which shows 3703 contracts settled by delivery, and you take a per cent of 126,295 by 3703you come out to

elr Dahl-cross [804]

2.08 per cent?

A Yes.

Q Those were the transactions that were satisfied by delivery on the New York Produce Exchange in 1963, correct?

A Correct, relative to total volume, yes.

Q And if you delete the 11,344 contracts settled by delivery -- I'm sorry, settled by the termination of the exchange, so you take that off the 126,000 and get down to 114890 contracts, and you divide 3703 into that you come out with 3.2 per cent?

A Yes.

Q By the way, those per cents are in contrast to the 80 per cent that appears on this chart?

A Yes, but the 80 --

Q All right. I understand that the 80 relates to the first notice day.

A First notice day.

Q With respect to the year 1962 where with respect to the first notice day you have a 38 per cent figure, if you divide the total contracts settled by delivery that year with the 68,510 transactions that appears on Exhibit 122 for 1962 you come out to 3 per cent flat; do you agree with that?

[815]

the cottonseed oil market was unstable or in some unhealthy condition as far as the New York Produce Exchange is concerned?

A I don't know of any.

Q Did you before you took the stand here in preparation for your testimony, consider informing your Government to review what the Government and trade papers wrote about the market at that time, in the fall of 1963, prior to November 20, 1963?

A No, I didn't review such papers.

Q You have said that with respect to some of these indicators that the schedules represent, that they could be a sign of an unhealthy market, and you were asked some questions about that.

A Yes.

Q Could they also be a sign of a healthy market, a bullish market, a healthy market?

A Some of them, yes; others no.

Q Which ones do you say yes for and which ones do you say no for?

A The ones that I would say no for are the large volume of transactions that took place on the futures market outside of the pit.

Q And all the others you say yes to?

A That one plus the deliveries. The increased volume of open interest, the -- not the volume of open interest, excuse me -- the increased open interest and the increased volume of trading could be due to legitimate business coming on to the market.

Q The "noes" that it couldn't be the sign of a healthy market, if I follow you, are the ex-pits and some other category, what is the other category that you say that is not a sign of a healthy market?

A The other one I would put in that category are the large amounts of delivery in the delivery month.

Q That is the figures that we have been over here, that as you figure them come up to high percentages and as I fugure them come to around two or three per cent?

A Yes. But the fact remains that we had a large number of contracts as we went into the delivery month that were tendered by delivery. The data shows that.

Q But all the others, you say apart from deliveries and ex-pits could be signs of a healthy market as well as unhealthy?

A They could be, yes.

Q Rise in volume, rise of open interest and just change in distribution of contracts?

A They could be.

Q You have followed, as I understand it, grain trading, have you not, on the Minneapolis Exchange for some years?

A Yes.

Q And with respect to volume of trading would you say there have been sharp increases from time to time in 1972 with respect to spring wheat trading?

A Yes.

Q I show you Defendants' Exhibit 2-A for identification, which purports to be a chart showing the volume of spring wheat trading in 1972, which is the red line, as compared to the average for the years 1967 to '71, do you see that?

A Yes.

Q Is that consistent with your recollection of the variation between the actual volume in 1972 and the prior four years, on an average?

MR. BERNFELD: Your Honor, we object generally, and we also have not received copies of the exhibit.

THE COURT: The objection is sustained.

Q Do you have a recollection, Professor Dahl, with respect to the year 1972 and spring wheat trading on the Minneapolis Exchange, that the volume of trading was much higher at points in time in '72, in other words, had

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increased, the volume of trading had increased in '72 over any of the four prior years, 1967, '68, '69, and '72, and '71.

MR. BERNFELD: We object.

THE COURT: The objection is sustained.

Q With respect to any of the sharp increases or decreases of volume of trading on the Minneapolis Grain Exchange, did that indicate to you an unhealthy market in the Minneapolis Grain market on spring wheat?

MR. BERNFELD: Your Honor, I object.

THE COURT: The objection is sustained. I am sustaining that objection, for your edification, Mr. O'Donnell, because I don't believe that his testimony is that even if there is an analogy, that volume alone was any evidence.

MR. O'DONNELL: Thank you, your Honor.

Q There have been, have there not, Professor Dahl, increases and sharp increases from time to time in volume of trading in spring wheat on the Minneapolis Grain Exchange?

MR. BERNFELD: I object, your Honor.

THE COURT: If there is a preliminary --

MR. O'DONNELL: Yes, your Honor.

THE COURT: I will overrule it.

Objection overruled.

A There have been sharp increases in recent years.

Q And there have been sharp increases in open interest in recent years always, has there not?

A Yes, and there are perfectly good reasons for that.

Q And there have been also changes and shifts in the distribution of those commitments among traders, have there not?

A Yes, there have.

Q And there have also been ex-pit transactions, have there not?

A We have ex-pit transactions in Minneapolis which are only exchange futures for cash, only.

Q And you also have -- and of course that was true on the New York Produce Exchange also, was it not, exchanges of futures for cash?

A I don't believe that was the case.

Q I thought we had agreed this morning that that was the case.

A If they were exchanges of futures for cash, counselor, then I have difficulty visualiz-ing how the open interest could rise, when we had exchanges of futures for cash.

Q Did you ever ask Haupt whether any of their

exchanges, their ex-pit transactions back in 1963 were not exchanges of physicals for futures?

A No, I didn't.

Q All right. Coming back to the Minneapolis Grain Exchange, is it also true that some contracts have been settled from year to year, I guess you said two or three per cent, by deliveries?

A Yes.

MR. BERNFELD: Your Honor, may I have a continuing objection to this line of questioning?

THE COURT: Yes, you may have a continuing objection to the line of questioning, and when the final question comes up, you may object to that.

Q Now, sir, have you come to the opinion that on the Minneapolis Grain Exchange these were signs of an unhealthy climate of trading with respect to the grains we have been talking about?

A No, I haven't.

Q Now, let's turn to the subject of the closing of the New York Produce Exchange on November 20, 1963. You are aware that it was shut down on that day, are you not, sir?

A Yes.

Q Are you aware that the New York Produce Exchange

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Q If the Exchange had remained open in the declining price market at the time, would that have been beneficial to Haupt's position or would it have lost more money than it did as the market declined?

A Anyone who is long and the market goes down, they lose.

Q Are you aware of what the New York Produce Exchange did in 1963 with respect to the fixing of a price at which all those contracts which were open were required to be settled? Do you know what the Produce Exchange did with respect to fixing a price?

A I know they did fix a price, yes.

Q And they fixed that price, did they not, in relation to the price of soybeans over on the Chicago Board of Trade?

A I'm not familiar with the details as to how they fixed the price.

Q Are you familiar with the fact that after they had fixed the price Haupt, instead of having to pay out any additional variation margin to the Clearing Association, received back from the Clearing Association in excess of three million dollars representing the original margin which it no longer had to keep with the Clearing Association because all contracts were settled?

A I'm not familiar with that. I haven't seen that.

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Q Have you ever heard of any other commodities exchange in modern times that has terminated contracts in that manner and shut down without requiring delivery of the contracts, without requiring delivery of the oil pursuant to the contracts?

A Certainly not in recent years.

Q Who did the shtting down of the Exchange and the fixing of a price?

A I suspect --

Q Was it the longs represented by Haupt or the shorts?

A It was the Board of Managers who determined that.

Q Yes. Who did the fixing of a price at which contracts had to be settled, fixing it as a set amount rather than let the decline continue?

Who did that benefit, the longs or the shorts?

A I suppose it would have benefited the longs. The market continued to decline.

Q Do you know when the New York Produce Exchange did think it was threatened by the shorts on the market, the other side of the Haupt position, with lawsuits because of the action it had taken? Do you know that?

MR. BERNFELD: Objection, your Honor.

A No, I don't know that.

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Q Do you know that the New York Produce Exchange, subsequent to November 20, 1963, was never again a viable institution because the shorts had no confidence in it because they had had their contracts cancelled out on them?

MR. BERNFELD: Objection, your Honor.

Q Do you know that as an expert in this commodities field?

MR. BERNFELD: I object, your Honor.

THE COURT: The objection is overruled.

You may answer.

A I know only that the New York Produce Exchange volume declined thereafter and subsequently -- I forgot even the exact date -- ceased operation.

Q When you say, "Declined," it declined not sharply but radically, didn't it?

A Yes.

Q Radically?

A Yes.

Q Down to virtually zero?

A Yes.

MR. O'DONNELL: That is all I have. That is all I have, your Honor.

THE COURT: All right.

MR. MINNEROP: I think I am next, your Honor,

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this time around.

THE COURT: I sort of had the impression there was going to be no further examination.

Go ahead, Mr. Minnerop.

I assumed no one had any questions.

RECROSS EXAMINATION

BY MR. MINNEROP:

Q Mr. Dahl, I represent two defendants here, Harry Anderson and Merrill Lynch.

Do you know Harry Anderson?

A No.

Q You have no knowledge, do you, as to what he did or didn't do in 1963, do you?

A No.

Q I take it, though, you do know Merrill Lynch at least by reputation, is that correct?

A By reputation, yes.

Q Do you not know Merrill Lynch to be a broker in securities and commodities?

A Yes.

Q Isn't it true that in connection with a transaction on any commodities exchange the broker knows the identity of his own customer; is that correct?

A Yes.

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Q But isn't it also true that he only knows the identity of the other broker on the other side of the transaction but not the customer of the other broker; is that not correct?

A Yes.

Q So, in other words, if A and B are the principals, the broker for A only knows A and the broker for B only knows B and the principals need not know each other and the brokers don't need to know who the principal of the other broker is; is that correct?

A I believe that is correct.

Q Once a transaction occurs does the broker have any proprietary or ownership interest in the contract that is purchased or sold on behalf of his customer?

A No.

Q Would you, therefore, agree that if the price of the contract goes up or goes down, it does neither benefit nor hurt the broker?

A Neither benefits nor hurts him if his customer can put up the necessary margin.

Q But he has no ownership interest and he doesn't gain or lose as regards his contract?

A No, not directly, just the commissions.

Q As regards the commissions, Professor Dahl,

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the broker earns his commission whether the customer makes or loses money; does he not?

A Yes.

MR. MINNEROP: Thank you.

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MR. BRYER: Thank you.

MR. SMITH: Defendants Vogel and Continental have no questions, your Honor.

THE COURT: Any redirect, Mr. Bernfeld?

MR. BERNFELD: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. BERNFELD:

Q Professor Dahl, do not exchanges have the ability to investigate trading activity of non-members who make trades through exchange members?

A Yes.

MR. O'DONNELL: I object to that unless it's tied to the New York Produce Exchange, your Honor.

MR. SMITH: I object to the vagueness of ability.

THE COURT: I am going to overrule the objection because, as I recall, a question was asked about that on cross-examination, and the objection is overruled.

You have already answered.

Q On cross-examination by Mr. O'Donnell, Professor, reference was mad to the margin rules of the New York Produce Exchange.

Do you recall the exact language of Rule 31 of the cottonseed oil trading rules of the New York

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Produce Exchange?

A No, I don't.

Q Reference was made to the fact that the minimum requirements of the exchange were the same as the minimum requirements of the clearing association.

I would like to refresh your recollection with respect to the rule by reading you this following language --

THE COURT: Was any of this --

MR. BERNFELD: This was raised by Mr. O'Donnell on cross.

THE COURT: I thought this had been a matter that was gone into with Professor Leuthold?

MR. BERNFELD: It was gong into by Professor Leuthold. I believe there was a misimpression left as aresult of the cross-examination and I wanted to clarify it.

THE COURT: All right. I'll have to hear it.

Q And the second half of Rule 31 reads as follows:

"Nor less than clearing house margin requirements, whichever is higher, provided, however, that no original minimum margin need be secured on contracts which are legitimate hedges which must be

certified in writing to the clearing member by the customer as such."

Do you recall reading that part of the rule?

A Yes.

Q Mr. O'Donnell raised the question of confidentiality of information and he asked you whether, in essence, information was confidential as among traders. He also asked whether there was anything in the Commodity Exchange Act that referred to his concept of confidentiality.

Do you recall the exact language of the section of the regulations under the Act that deal with the subject of confidentiality?

A No.

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Q I would like to refresh your recollection by reading the second half of the rule:

"Provided, however, that this prohibition shall not apply to disclosures made in good faith to the business conduct committee or other proper committee of official of a contract market of matters in respect to which such contract market has responsibility or duty under the Commodity Exchange Act, or which in the judgment of the Act administrator adversely affects such m arket or are prejudicial to the interests of producers or consumers."

Do you recall that part of the rule?

A Yes.

MR. MINNEROP: Your Honor, I hate to interrupt but it seems to me that Mr. Bernfeld is testifying here, not asking questions.

THE COURT: The objection is overruled so far.

Q Professor Dahl, based upon your knowledge of this rule, is there anyting in the rule, or for that matter, to your knowledge was there anything in the exchange rules themselves in 1963 which precluded the New York Produce Exchange or its business conduct committee or its officers from obtaining information relating to

elr2 Dahl-redirect [849]

positions of traders in connection with the regulation of the New York Produce Exchange?

A No.

Q There were no secrets from the board of managers, they could obtain the information if they needed it?

MR. O'DONNELL: I object to that, your Honor.

THE COURT: That objection is sustained, Mr. Bernfeld. You are going to put on evidence about that. You know how to do it.

Q With respect to Exhibit 125, the cottonseed oil futures contract settled by delivery, as compared to size of open interest on the first notice day, Mr. O'Donnell referred to certain statistics prior to 1963 and asked whether or not you considered those figues to be high.

I would like you to turn your attention to Plaintiff's Exhibit 125 in evidence, and I'd like to ask you with respect to the March contract month and -- excuse me, the March and the May contract month, both, how those figures compared historically to the prior year's experience.

THE COURT: I am not going to go into this any more. I think you read the exhibit, you asked him

elr3 Dahl-redirect [850]

about the figures; Mr. O'Donnell has asked him about other figures, it is in evidence. Now let's move on.

Q A number of questions, Professor, were asked concerning the percentage of contracts settled by delivery as compared to total open interest. Plaintiff's Exhibit 125 compares contracts settled by delivery to the size of the open interest on the first notice day.

Do you have an opinion whether these two figures are separate market indicators?

THE COURT: I don't think I understand that question. Re-read the question --

MR. BERNFELD: May I rephrase it, your Honor?

THE COURT: I don't know whether it's because it was improperly phrased or just becasue I didn't understand it. You do whatever you want to do. I just want to know what you are asking.

Q Mr. O'Donnell referred to the fact that you have testified within a range of approximately two per cent of contracts, two to three per cent in fact, I believe was Mr. O'Donnell's statement, two to three per cent of contracts were settled by delivery as compared to the total open interest. Exhibit 125 refers

elr4 Dahl-redirect [851]

to the size of the open interest on first notice day --

MR. O'DONNELL: Your Honor, I hate to interrupt, but I didn't talk about total open interest, I talked about transactions.

THE WITNESS: That's correct.

MR. BERNFELD: You were comparing it to trading volume?

MR. O'DONNELL: Trading volume with deliveries, yes.

THE COURT: He was talking I think about 122.

THE WITNESS: That is correct.

THE COURT: And 125.

Q Was Mr. O'Donnell's example the same or a separate market indicator from the one indicated on Plaintiff's Exhibit 125?

THE COURT: I think that you and Mr. O'Donnell agree on that. There is no dispute between the two of you that it's different.

Q Turning to Plaintiff's Exhibit 126 in evidence, the monthly volume of cottonseed oil contracts ex-pit 1961 to 1963, Mr. O'Donnell pointed to a decrease from the months of February to the month of March, 1963 from 940 contracts traded ex-pit to 488 contracts

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traded ex-pit.

Professor, can you tell us whether the total number of contracts traded during the month of March, '63 alone exceeded the aggregate ex-pits for either of the prior two years?

MR. O'DONNELL: The exhibit speaks for itself, your Honor.

THE COURT: I agree. You may answer the question, and then move on to something else. We are not going over these exhibits any more. You may answer.

A For the month of March, they --

Q For the month of March?

A It was higher than the total in '62 -- we are talking about -- what you are asking about is 6B's, aren't you?

Q Yes, 6B's.

A Higher than for the total in '62 but not in '61.

THE COURT: All right. Let's go on.

Q In response to one of Mr. O'Donnell's questions you indicated that in looking at these market indicators which appear on Plaintiff's Exhibit 122 to 126, you might desire some additional information.

What types of additional information might

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you want to have?

A The additional information that one would need, of course, if you have any suspicions, these would lead you to any suspicions of anything in the market would be, of course, the positions of the traders.

Q Could the board of managers of the New York Produce Exchange obtain this information?

A Yes, they could obtain this information, I suppose in two ways. One would be from the Commodity Exchang e Authority.

Q What would be the second one?

A The second one would be to go to the clearing house and ask for the list of the clearing members that have long positions,and then go to those members and ask them to reveal their customers, if they want to -- if this is a part of an investigation that they are making.

Q Professor, I show you Plaintiff's Exhibit 131 for identification entitled aggregate long and short position in cottonseed oil futures contracts held by selected brokers, January 31 to November 19, 1963.

Do you recognize this document?

MR. O'DONNELL: I object to this, your Honor, on the ground that it goesbeyond the scope of the

elrf 3 Dahl-redirect

A Rather than using the term standards, I would like to use the term analysis. Your analysis of the composition of the market in soybean oil would be quite similar to what you would look for cottonseed oil or even wheat, for that matter.

THE COURT: I understand your testimony that those indices that you are talking about are indices that you would look for in any commodities market, is that correct?

THE WITNESS: Yes.

THE COURT: All right. Then answer the question.

Q With respect to the March 1963 soybean oil futures contracts pursuant to the analysis that you have described to us do you have an opinion whether a 44 per cent concentration in the near month would present grounds for concern to the market on which it was traded?

MR. O'DONNELL: Your Honor, I object.

THE COURT: The objection is sustained.

Q Professor, if in 1963 the New York Produce Exchange acquired knowledge that Ira Haupt was clearing a large number of contracts for traders on the long side of the market, do you have an opinion whether it would be within the purview of the Business Conduct Committee to conduct an investigation of that position?

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MR. BERNFELD: I have one further questions, your Honor.

REDIRECT EXAMINATION

BY MR. BERNFELD:

Q Take Mr. O'Donnell's hypothetical, if Mr. Berg were rebuffed in connection with an investigation to attempt to obtain information concerning the positions of traders from the Commodity Exchange Authority, could Mr. Berg as managing director of the Produce Exchange obtain this information by going in the first instance to the clearing house and the next instance to the brokers?

A He could get that information internally in the Exchange if it is a part of an investigation.

MR.O'DONNELL: One or two questions on that very subject.

THE COURT: All right.

RECROSS EXAMINATION

BY MR. O'DONNELL:

Q Is it not correct, Professor Dahl, that asking for positions of members and, in turn, the members' positions with respect to their individual customers, a so-called position call is a very extraordinary thing for an Exchange to do and one which runs smack into this principle of confidentiality?

gwtf 2 Dah cross

A It is a sensitive thi , I will admit that, very sensitive in these markets. But the Business Conduct Committee, which reads the rules of these exchanges, does have full subpoena power if they are suspicious of any manipulations.

Q And --

A And they have the power to call for any information and any member is obligated to provide that information.

Q I agree that they have the power, and I think you agree with me that it would be an extraordinary thing to do because it is in a sensitive area and one which you agreed with me at the outset was the hallmark of this commodities futures trading, that people wanted to keep their own positions to themselves, otherwise, they would be vulnerable to competition in the trade, correct?

A Positions are sensitive in a competitive economy.

Q Do you know whether or not the New York Produce Exchange did ask for a position call in November 1963?

A No, I don't.

Q You don't know one way or another? You don't know that they did and you don't know that they didn't; is that right?

A I have --

elrf 2 "Preston"

on a daily basis of all these people and asks them what is going on. Then in his publication he gives you a snyopsis of what his findings were in his travels around that day.

"Q Do you recall that individual's name? You said the editor.

"A A man by the name of Oislander I believe his initials are J. I.

"Q You say the publication would identify trade factors in the cash market.

"Would that include exporters?

"A It would say a large exporter at times, or a large soaper or the leading packer or the Northwest processor.

"Q Yes?

"A Or the Decatur processor, and you can draw your own conclusions.

"Q You would generally know to whom he was referring?

"A Well, you would assume by these vague identities.

"Q Do you recall in 1963 that the name Allied Crude Vegetable Oil Refining Corporation was ever mentioned?

"A I would say at times he had mentioned it in his trade news service.

"Q And identified as Allied or just a large exporter?

"A A large eastern exporter.

elrf 3 "Preston"

"Q You say mentioned it. In what connection?

"A I don't recall.

"Q Would it be mentioned in connection with cash transactions or export transactions?

"A It would in all possibilities be mentioned in relation to an export commitment.

"Q I think you said Allied might be referred to as a large eastern exporter?

"A Yes.

"Q During 1963, Mr. Preston, did you know that Allied was a large exporter?

"A I would say yes.

"Q Did you know that from the fact that Allied's name appeared in the trade news service?

"A Well, over a long period of years he was identified as a large exporter.

"Q I think you said the trade news service would identify what was going on in the cash market. Did that publication also contain information as to the futures market?

"A It would give a resume of the futures market, both scybean oil and cottonseed oil.

"Q You say a resume?

"A Yes.

elrf 4 "Preston"

"Q What sort of information?

"A It said the market was firm and that a leading exporter was a buyer.

"Q Would the publication indicate prices at which the transactions were consummated? This is in 1963.

"A No, he wouldn't mention price, because there is one of the sheets that he publishes that gives you a trading range. It gives you the opening, the high, the low, and the last, and the volume of trading and the change in the open interest.

"Q You say one of the sheets that he published. Is this published on a daily basis?

"A Oh, yes.

"Q And would that include information, you said the opening prices, the high, the low, the close and the volume?

"A The volume of trading.

"Q And the change in the open interest?

"A Yes.

"Q Do you recall, Mr. Preston, if in 1963 you referred to that on a daily basis?

"A I read it every day.

"Q So then you would be aware of the volume of trading on the Exchange?

elrf 5 "Preston"

"A Yes.

"Q And the changes in the open interest?

"A I would say yes.

"Q Is it your recollection that the volume of trading on the Exchange in 1963 was larger than in 1962?

"A I would say the volume was increased.

"Q Was there a large volume of trading on the Exchange in 1963?"

MS. KAYE: Objection.

THE COURT: Was there a large volume of trading on the Exchange in 1963 -- the objection is overruled. You can answer it.

MR. HARRIS:

"A I would say that the volume was considered good.

"Q By 'good' do you mean in terms of quantity?

"A Yes. I thought maybe he was making a value judgment? --

MR. HARRIS: I think you are reading Mr. Lobell's statement.

"Q How about the open interest in 1963, was there a large open interest in 1963?

"A I would say the volume increased as we moved along in 1963.

"Q I am talking about the open interest.

"A The open interest increased.

elrf 6 "Preston"

"Q To your recollection, was the open interest in 1963 greater than in 1962?

"A I believe so.

"Q Greater than in 1961?

"A I believe so.

"Q I think you said that the trade news might include a statement that a large exporter was buying futures contracts, is that correct, in 1963?

"A I believe so.

"Q Do you recall, Mr. Preston, whether in 1963 the trade news contained a reference to the fact that a large exporter was buying cottonseed oil futures contracts?

"A I believe it did.

"Q And do you know who that exporter was?

"A I assumed that it was Allied.

"Q But the question of whether or not it was Allied, was that ever discussed with you by anyone on the floor of the Exchange in 1963?

"A I would say yes."

MR. HARRIS: Then there is a note, your Honor, where counsel qualified that to mean prior to November 14, 1963.

"Q It was discussed?

"A I would say yes.

elrf 7 "Preston"

"Q Was it discussed frequently?

"A I would say frequently.

"Q In 1963, Mr. Preston, did you know whether or not Allied was a large buyer of cottonseed oil futures contracts?

"A I didn't know definitely.

"Q Did anyone ever tell you that Allied was a large buyer of cottonseed oil futures contracts?

"A No.

"Q You didn't know definitely?

"A That's right.

"Q Did you assume it?"

MS. KAYE: I object to that question, your Honor.

THE COURT: I am going to offer it. You can answer.

"A I assumed it.

"Q From what did you assume it?"

The first part of the answer is at page 68 line 4:

"A From what did I assume it?

"Q By it, I mean that Allied was a large buyer of futures contracts.

"A Well, he used a certain broker on the floor.

"Q Which broker was that?

elrf 8 "Preston"

"A James Coemzo and John Fontana and Michael DeAngelis.

"Q Did you in 1963 know that Comenzo, Fontana and DeAngelis were Allied's brokers?

"A It was general knowledge on the floor that they handled business for Allied.

"Q During 1963, Mr. Preston, was Comenzo a buyer more often than he was a seller?

"A It seemed that way.

"Q And that was something you were able to detect from your being on the floor?

"A From being on the floor every day and participating in the trading in the ring.

"Q How about Fontana, Mr. Preston? Was he generally in 1963 a buyer more than a seller?

"A I would say yes.

"Q Again, this is something you were able to ascertain from your being on the floor?

"A From my observations, being in the ring.

"Q How about Michael DeAngelis? Was he generally a buyer rather than a seller?

"A I would say yes.

"Q And again from being in the ring you were able to observe that?

gwrf 3 "Preston"

"A I believe so. I wouldn't want to be pinned down to a specific date or a given time.

"Q After that was Haupt the principal name that Comenzo gave up after that?

"A Almost on a daily basis.

"Q How about Mr. Fontana, Mr. Preston, was that also true of him?

"A Williston & Beane and sometimes Haupt.

"Q How about Michael DeAngelis?

"A I believe that at given times during the year Michael DeAngelis gave up Peters, Williston & Beane and Haupt and what the time period was --

"Q Starting in about August 1963 did DeAngelis --

"A I would say Ira Haupt.

"Q Would I be correct then that starting in about August 1963, Mr. Preston, you assumed that Haupt was acting as Allied's clearing member?

"A Well, I wouldn't identify it as any -- I would say that the group that Mr. Comenzo was operating for. If it was a group and it was Allied, I had no way of really knowing, but he gave up Ira Haupt principally.

"Q You are saying that whatever group it was that Comenzo was operating for, you assumed that Haupt was acting as their clearing member?

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gwrf 4 "Preston"

"A That's right.

"Q But the question of whether or not Haupt was Allied's clearing member, was that ever discussed by you with anyone else on the floor of the Exchange in 1963?

"A I would say that it was generally assumed that it was Allied or a related group.

"Q You said it was generally assumed it was Allied or a related group.

"What was generally assumed?

"A That the buying Mr. Comenzo was doing and giving up to Ira Haupt was either for Allied or a related group.

"Q Was this ever discussed by you prior to November 14, 1963?

"A There were discussions almost daily on the floor about buying.

"Q You say discussions almost daily about buying.

"What was the subject of those discussions?

"A Oh, just the type of buying and the buying continues and the -- when you have large buying on a market, it lends itself to discussion as to why.

"Q You say type of buying.

"What do you mean by type of buying?

"A Well, Allied was identified as a large exporter and the type of buying would be considered buying to cover

gwrf 5 "Preston"

an export commitment.

"Q The buying of a futures contract to cover an export commitment, is that correct?

"A Yes.

"Q Would that be a hedge, Mr. Preston?

"A It would be an inverted hedge in my estimation.

"Q What do you mean by an inverted hedge?

"A Well, instead of the normal hedge where you buy cash oil or sell it to protect yourself, you are buying in anticipation of an export commitment.

"Q But is that considered to be a hedge?

"A An inverted hedge. I would consider it such.

"Q And you say there was discussion in 1963 on the floor of the Exchange prior to November 14th that Allied was buying to cover export commitments?

"A Well, it was generally assumed that this was a type of buying that was going on.

"Q You were a member of the Board of Managers of the Produce Exchange during 1963; were you not?

"A I was.

"Q Was the reason for Allied's buying ever discussed at a meeting of the Board of Managers prior to November 14, 1963 which you attended?

"A I don't recall any discussion.

gwrf 9 "Preston"

"Q And the substance of those discussions was?

"A That it was against an export commitment.

"Q Was there ever a discussion at a meeting of the Board of Managers prior to November 14, 1963 as to whether Allied's buying was against export commitments?

"A Not to my knowledge.

"Q Was the subject of Allied's buying ever discussed by you with another member of the Board of Managers not at a meeting of the Board prior to November 14, 1963?

"A There could have been some other Board member on the floor when general discussions took place and in that context I would have to say yes."

MR. HARRIS: The next thing we have, your Honor, is page 83 starting at line 13:

"Q Was the subject matter of exports ever discussed by you during 1963 with anyone else on the floor of the Exchange?

"A I would say general discussions as it related to the overall picture of fats and oils.

"Q You say general discussions in terms of what?

"A What the largest exports would mean to the price structure. If they were bigger than the projections, it would affect the price and the price of oil would move up. If they were smaller, there would be a surplus supply

gwrf 10 "Preston"

and your price structure would probably move down.

"Q Do you recall if you did have such discussions in 1963?

"A We have discussions along these lines every day in the week.

grl "Preston [899]

"Q Do you recall that in 1963 there were discussions that there would be a large volume of exports or a small volume of exports?

"A There were discussions that there was a potentially large export interest. It was pinpointed as a large Russian order, that they were going to be in the market to buy a large quantity of oil. Nobody could confirm anything on it.

"Q Do you recall, Mr. Preston, when in 1963 those discussions took place?

"A I would say in September.

"Q At that time there was discussions as to a possible Russian interest in buying oil; is that it?

"A It was related to the buying that was going on in the market at that time.

"Q You say related to the buying. You mean that was an explanation given for the buying?

"A That was a reason given for the buying that was going on, that they were accumulating oil for a possible potential Russian purchase.

"Q Yes.

"A And the Russians being the type of people that they are, they say nothing.

"Q And the buying going on you mean was Allied's

gr2 "Preston [900]

buying?

"A On a daily basis the buying that Comenzo was doing or Fontana or DeAngelis, and by DeAngelis I mean Michael DeAngelis.

"Q Mr. Preston, was there ever any discussion at a meeting of the board of managers of the produce exchange prior to November 14, 1963 as to the fact that Allied's buying or Comenzo's or Fontana's or DeAngelis', that that was for the purpose or accumulating oil for sale to Russia?

"A Not to my knowledge."

MR. HARRIS: The next thing is the bottom line on page 89, your Honor.

"Q I think you said that, to your knowledge, the board of managers of the produce exchange did not make any effort or take any steps prior to November 14, 1963 to determine whether Allied's buying of futures contracts was in an amount in excess of that which it would need to fulfill its export commitments?

"A That is right.

"Q I take it that no one in 1963 ever told you that the board had taken any steps or made any effort to determine whether Allied's buying of futures contracts

gr3 "Preston [901]

was in an amount in excess of that which it would need to fulfill its export business?

"A That is right."

MS. KAYE: Objection.

THE COURT: The objection is sustained.

MS. KAYE: Ask the reader, please, to await the objection before he forges ahead with his answer?

THE COURT: All right.

MR. HARRIS: Your Honor, I would plan to move to the top of page 93 at this point, starting at line 2.

MS. KAYE: Just in advance of what Mr. Harris is going to read, the immediately prceding question which is on page 92, line 12:

"Q Did you ever discuss with anyone on the floor of the exchange prior to November 14, 1963 the reasons why the buying was continuous?

"A I would say yes.

"Q And the reasons that were given were what?

"A Well, everybody was guessing. There was a big guessing game as to why and what and how, and it was generally assumed that it would have to be an export commitment."

gr4 "Preston [902]

MR. HARRIS: This just continues right on from there:

"Q Mr. Preston, during 1963 and prior to November 14 of that year in Mr. Comenzo's orders, did he enter those at any particular time of the day as opposed to any other time of the day?

"A I would say there was no pattern to it. It would just come in at various times during the day. They always seemed to be in there at the close.

"Q They always seemed to be in at the close, Mr. Comenzo's orders?

"A There was no real pattern to it. They would always come in during the business day and they were generally there at the close also.

"Q Was there a greater volume of orders by Comenzo at the close than there was during the day, and this is in 1963?

"A I would have to say that I don't remember because going back five years or four years, it is hard to pinpoint a specific volume.

"Q In 1963, Mr. Preston, did Mr. Comenzo execute his orders at any particular time of the day as opposed to any other time of the day?

"A I would say that there was no particular time

gr5 "Preston [903]

during the business day. I mean, his orders would come in at various times or all their orders, DeAngelis and Fontana and Comenzo, but they always seemed to have orders there at the close of the day, at the close of the market.

"Q You say they. Are you referring to Fontana or --

"A Any one of the three, but most generally it was Jimmie Comenzo who handled most of the business that seemed to emanate from this source."

MR. HARRIS: Then I go to the top of page 99, your Honor.

MS. KAYE: I will pick up where Mr. Harris left off. Page 95, line 13. The question begins at line 9:

"Q Do you recall if anyone ever asked you why you thought Comenzo or Fontana or DeAngelis always seemed to have orders in at the close during 1963 prior to November 14?

"A I wouldn't see anything unusual in having orders in at the close if I had been a buyer all day lone.

"Q Did anyone on the floor of the exchange, Mr. Preston, ever tell you prior to November 14 that the purpose of Comenzo's orders was to fix the price for an

elrf 2 "Preston"

same spot.

"Q Mr. Preston, did you ever discuss with anyone on the floor of the Exchange prior to November 14,1963 the question of whether Comenzo's buying was unusual?"

MS. KAYE: Your Honor, I'd like to move to strike that answer before it is given.

THE COURT: I can't go on that. I don't have a copy.

MR. O'DONNELL: May I hand you this transcript.

(Pause.)

THE COURT: The objection is sustained.

MR. LIMAN: Your Honor, would you like to have a transcript to follow? We have an extra one here, and I know that some judges like to read along with it.

THE COURT: All right.

(Pause.)

THE COURT: The voices have been relatively expressive and I have been following anyway.

MR. HARRIS: Page 130, line 3:

"Q Mr. Preston, do you recall if in 1963 there were deliveries on the Exchange throughout the year?

"A I would say yes."

Counsel then stipulates that the question is prior to November 20, 1963.

916

elrf 3 "Preston"

"A I would say yes, and in every month as it became current there were deliveries.

"Q Were there more deliveries in 1963 than in 1962?

"A I would say yes.

"Q A great many more?

"A I would say there were more. The volume of increase I couldn't pinpoint.

"Q During 1963, were you aware of the fact that there was a greater number of deliveries than there were in 1962?

"A I would say yes.

"Q Was the fact that there was a greater number of deliveries discussed by you with anyone on the floor of the Exchange in 1963, prior to November 20th?

"A There is always discussion along those lines. This was part of the general floor gossip.

"Q Do you recall what the substance of those discussions was in 1963?

"A Just general discussions as to the number of deliveries, how well they were taken.

"Q Was there any discussion as to who was taking the deliveries?

"A There is always discussion along those lines.

elrt 4 "Preston"

"Q Do you recall what that discussion was in 1963?

"A Specifically, no.

"Q Do you recall generally?

"A I don't think I can answer it in general terms because -- well, I don't think I can answer it in general terms.

"Q Was the name Allied mentioned in connection with taking deliveries in 1963 prior to November 20th?

"A We have no way of knowing who a customer is on the tranferrable notices that are stopped. We only know houses. We only know clearing names such as Ira Haupt, Williston & Beane, Merrill Lynch, Orvis. We don't know the customers that the houses stop these transferrable notices for.

"Q You say you know the houses.

"What is the source of your information as to the houses? Is that information posted on the floor of the Exchange?

"A That is posted on the chalkboard of the Exchange, as to who issued the transferrable notices and who stopped them.

"Q During 1963 did the name Ira Haupt & Co. appear as a firm which stopped deliveries?

"A I would say yes.

elff 5 "Preston" [918]

"Q Did it appear frequently?

"A I don't know how frequently.

"Q Did it appear more than once?

"A I can't recall.

"Q You can't recall if it appeared more than once?

"A I can't recall.

"Q During 1963 and prior to November 14th did anyone express the opinion to you that it was Allied who was taking deliveries?

"A There were discussions along those lines on the trading floor, but addressed to me, the answer would be no.

"Q Not addressed to you specifically.

"A No.

"Q But you are aware of the fact that there were discussions on the floor, that it was Allied who was taking deliveries?

"A Or that group.

"Q Or that group?

"A Yes.

"Q During 1963 and prior to November 14th, was there any discussion by the Board of Managers of the Exchange as to who was taking delivery?

"A Not that I recall.

"Q During 1963 and prior to November 14th, did

qwrf 2 "Preston"

"Q During your employment at D. R. Comenzo &

"Q The number of contracts settled by deliveries, is there any --

"A There is a great variation. Depends on the differential that exists at a given time. By the differential I mean the differential between the crude and the board, with the cost factors involved in there.

"Q Mr. Preston, would it be a normal condition if ten per cent of the outstanding contracts were settled by deliveries?

"A Percentagewise, I would hate to say.

"Q Do you understand that there is no historical pattern of which you are aware as to the number of percentage of contracts settled by deliveries?

"A As I see it, price determines everything.

"Q The answer is no, then; is that correct?

"A That is right."

MS. KAYE: Page 189, line 10:

"Q Mr. Preston, during 1963 and prior to November 14th, did any of your customers or the persons for whom you executed orders ever express concern over the volume of trading in cottonseed oil?

"A I would say no.

"Q Did any of your customers or persons for whom you executed orders in 1963 ever express the opinion

9b pm gwrf 1 "Preston"

"Q From the time you became a member of the Board of Managers up to and including November 14, 1963, did anyone ever suggest at a meeting of the Board that the Board should seek to determine if there was a manipulation of prices?

"A No."

MR. HARRIS: I next go to page 254, line 6:

MS. KAYE: Page 243, line 12:

"Q Mr. Preston, am I correct then that your testimony is that during your tenure as a member of the Board of Managers you yourself saw no evidence of a manipulation?

"A Of a manipulation?

"Q At any time during your tenure.

"A That is right.

"Q Is it your understanding, Mr. Preston, that if you had seen evidence, then it would be your obligation to call it to the attention of the Board?

"A I would say yes.

"Q And the Board would have a duty to make an investigation?

"A No, I think I would go through the channels if I had a complaint to make.

"Q What channels are those, Mr. Preston?

"A The managing director and then he would refer

gwrf 10

genuine excuses. Last night, as I did every night in this trial, I said is there any change in the witness list?

We were not told that Mr. Moore was going to be called. We were told the first time this morning.

If we can deal on the Comenzo point, we have asked, is Comenzo coming? We are told they may not need him. Now we are told they may not be able to get him.

Comenzo is a man for whom there is a significant background, a good deal of work to prepare for cross examination. It is not fair.

Now, Mr. Moore I think we perhaps could take care of very quickly.

My understanding, your Honor, from their list is that he is being called to establish a foundation to put in evidence Exhibits 25 and 26, which are letters that he wrote to Mr. Weinstein of the Clearing Association, sending copies in the case of one to other members of the Clearing Association, but never sending a copy to either Mr. Berg or anybody at the Produce Exchange.

My understanding is, and I haven't talked to Mr. Moore, but others have, that there is some question as to whether he can even identify these as documents that he wrote or identify who firm N is at this date, so many years after the event.

gwrf 11

But, your Honor, assuming that Mr. Moore could identify this as letters that he wrote to the Clearing Association, what does that have to do with this case? How could anything be more hearsay as to everybody in this case, including the Produce Exchange, than letters which were sent to a non-party?

It seems to me that we are making a good deal out of nothing because if the declarations are ruled inadmissible hearsay, then we don't need him. His state of mind is obviously not a real factor, Mr. Moore's state of mind in this case. The Produce Exchange may be or if my client had notice of it, it may be.

6B grl [1013]

MR. HARRIS: Your Honor, if Mr. Kirsch could read our proposed stipulation, I think it would be clear what it is we are trying to adduce through Mr. Moore.

MR. KIRSCH: Your Honor, I would like the defendants to stipulate that Mr. Moore wrote these two letters as a result of discussions at the meetings of the clearing association during the spring of 1963, April: that the discussions at those meetings were similar to the discussions in substance; the substance was similar to that reflected in the August minutes of the clearing association meeting as to which the objections were overruled; and the substance of this is that there was concern on the part of people with experience in the cottonseed oil business in 1963; that Mr. Moore had been a member of the produce exchange since 1923, I think --

THE COURT: Was he a member of the board?

MR. KIRSCH: Not of the board, but he was a member of the produce exchange and he was a member of the board of the clearing association.

THE COURT: I understand.

MR. KIRSCH: He's a man with experience. He saw these warning signs. The other members of the board saw these warning signs or some ofthem.

gr2

MR. LIMAN: The board of the clearing association?

MR. KIRSCH: Yes.

MR. HARRIS: Of which Continental and Merrill Lynch are members.

MR. LIMAN: Not of the board. That was a misstatement.

THE COURT: As I understand it, the board of the produce exchange, in terms of their action, operates through a board of managers and a staff and a board of directors.

Is that the board of managers?

MR. LIMAN: Board of managers is the board of directors.

THE COURT: All right. Therefore, the reference to Mr. Preston made as a member of the board of managers throughout this deposition, the discussions, I regard as being relevant, not what Mr. Preston himself did or said outside. A lot of this I think we could eliminate.

It's also clear, at least for purposes of this trial, that the clearing association has been severed and that that trial is going to be before me. That stipulation, if I understand it, is a stipulation,

[1017]

gr5

exchange, cannot in any way prove the state of mind of Berg or anybody else. This is just rank hearsay.

THE COURT: It's clear to me, Mr. Harris, at this stage of the proceedings, at this stage of the record, insofar as my own knowledge of the matter is concerned, that you are making an assumption in regard to the matter that I have no basis for allowing.

If you want to introduce or feel it necessary to introduce testimony that's going to show that the clearing association sent warnings and had the same functions and so forth in regard to the produce exchange and its board and that it discussed these various things, and some of these people were on the board of managers of the produce exchange, then I think maybe you are making a connection.

You are asking for a connection that may be there. Maybe it's there by virtue of the fact that they are in the same business. In this case, as far as I'm concerned, the connection hasn't been sufficiently made.

As you know, I have gone down two opinions in this case and my analysis of it was an analysis which sought to separate the responsibility or clarify what the responsibility of each was and that was, of course,

gr6

the burden of the briefs that have been presented to me thus far.

Now what you are telling me is that the division has been sort of blurred and they aer now one and the same or similar.

I'm not prepared to accept that unless you are going to introduce some proof. It may well be at some stage in this proceeding I will change my mind.

MR. O'DONNELL: Your Honor, the witness list with respect to Mr. Moore clues as to the purpose of this testimony, and it's simply to identify his letters of April 25 and May 8, 1963, the two that Mr. Liman has been referring to, whereas with respect to other witnesses like Mr. Fontana and Mr. Comenzo, we understand that we are clued to operation and activity in the floor of the produce exchange.

So I submit to your Honor that he is not calling him for the purpose of showing any relation between the produce exchange --

MR. HARRIS: I'm not tryint to show relationship, your Honor. It's not essential at this time to even deal with the question with whether they are mingled or totally separate. These are people

who are eyewitnesses with what was going on in 1963. They are not parties to the case. They were there and they saw what was going on, and I think that's relevant, just as any other eyewitness is relevant for the jury to evaluate the testimony of the people in charge.

THE COURT: It doesn't appear to me that it's relevant if you and I see something and you are charged with it and I'm the one that has no connection with it.

MR. HARRIS: If I deny I saw it and you are standing next to me and you say well, I saw it, at least the jury is entitled to draw an inference that I'm slanting the facts.

THE COURT: I think I have heard enough argument. It seems to me that you haven't given me any basis to allow that stipulation to come inat this time. The proffer of the stipulation is denied. It's in the record.

It may well be at some future time when you have established the point I may allow it. At the present state of the record, I agree it is hearsay. It has no relevance at the present time to this case or to these defendants. Therefore, the proffer is

elr "Preston [1028]

"Q During 1963 and prior to November 14 were you ever told that the exchange's managing director had requested Mr. DeAngelis to reduce his position in the cottonseed oil futures contracts?

"A No."

MS. KAYE: Page 477:

"Q Do you recall if there was at any time during 1963 a shortage of cash oil, cottonseed.

"A In 1963?

"Q Yes.

"A I would say no.

"Q Mr. Preston, do you know whether or not there was ever any time during 1963, prior to November 14 of that year, when any holders of short positions experienced difficulty in meeting their commitments or making deliveries?

"A No. Not to my knowledge.

"Q Do you know whether or not hte ex-pit transactions consummated in 1963 had an effect on prices of cottonseed oil futures contracts?

"A I don't think so.

"Q You don't think they did?

"A No.

"Q Does an ex-pit transaction ordinarily have an

elr "Preston [1031]

"A The liquidation of the nearby contract being held by speculators who didn't want delivery.

"Q And the taking up of delivery would tend to support the price, is that correct?

"A Yes."

MS. KAYE: Page 506, line 14:

"Q Mr. Preston, I think you had previously testified that starting in and around September, 1963, through at least the first part of November, 1963 there were rumors of a Russian oil deal, is that correct?

"A Yes.

"Q Do you recall that at that time there were rumors of any other prospects for substantial exports? And by other, I mean other than the Russian oil deal.

"A I think this public law 480, and if we could go back into some of these trade news service releases, we would find that there was talk of other countries getting sales agreements, purchase authorizations under that public law 480 for oil. The details I just couldn't pinpoint.

"Q Is it your recollection that this was in and around the period September through November, 1963?

"A I think so.

"Q That there was talk of other substantial

[1045]

8a am gwrf 1 "Preston"

MS. MEIBURGER: Page 611, line 18:

"Q Mr. Preston, do you recall attending a special meeting of the Board of Managers of the New York Produce Exchange on November 14, 1963?"

MR. SMITH: This is a meeting which I believe is undisputed that my client, Mr. Vogel, did not attend.

I would respectfully attend a limiting instruction with respect to this.

THE COURT: Is that conceded?

MR. HARRIS: Yes, Mr. Vogel was not present at the Board meeting of November 14th.

THE COURT: All right. Whatever is heard about this meeting, you understand that Mr. Vogel was not present and, therefore, anything that was discussed you can't consider in relation to your consideration of him.

All right.

MS. MEIBURGER:

"Q Mr. Preston, do you recall attending a special meeting of the Board of Managers of the New York Produce Exchange on November 14, 1963?

"A I do, yes."

MS. MEIBURGER: Page 691, line 3:

"Q Mr. Preston, at the meeting of November 14th were you concerned about these large number of open long contracts

gwrf 2 "Preston"

reportedly held by a concentrated interest?

"A I became concerned because of the necessity of appointing a control committee.

"Q Will you tell me what it was that you were concerned about?

"A Well, this implied that there were problems and that there was something to be investigated, something to concern yourself about if you are a member of the Board, I feel."

MS. MEIBURGER: Page 622, line 14:

"Q Mr. Preston, at the meeting of November 14th did any person attending that meeting express the opinion or state the long position was the result of a manipulation?

"A I didn't hear any statement like that.

"Q That the concentrated long position was an attempted manipulation?

"A No statement at all made alog those lines.

"Q Was there any discussion of the subject of manipulation at the meeting of November 14th?

"A Absolutely none.

"Q At the meeting of November 14th, Mr. Preston, do you recall if there was any discussion as to which interest held the concentrated long position?

"A Not that I can recall. There was no mention

grl "Preston [1053]

MS. MEIBURGER: Page 670, line 2:

"Q Prior to November 14, Mr. Preston, had you been aware of any transactions which you believed reflected unusual trade operations?

"A The only transactions that I recall that would be unusual, and this would be unusual as to size, were the ex-pits.

"Q You said unusual as to size?

"A Yes.

"Q You mean the quantities involved were larger than we were used to by other people in the trade."

MS. MEIBURGER: Page 690, line 7:

"Q Was there any discussion at the meeting of the 14th as to what action the board might take after the control committee concluded the investigations?

"A No."

MS. KAYE: Page 701, line 17:

"Q Do you recall if during this period, September 1, 1963 to November 15, 1963, there had been any large fluctuations in prices?

"A I don't recall any large fluctuations."

MS. KAYE: Page 705, line 24:

Q During your employment at D. R. Comenzo & Company did you handle any business for Allied Crude Vegetable Oil Refining Corporation?

A Yes, I did.

Q Did you handle any business for Mr. Tino DeAngelis?

A Yes, I did.

Q What was the nature of that business?

A Well, the trades that would come down to the floor from them to be executed I would give to other brokers.

Q What kind of trades are we talking about?

A Buying and selling cottonseed oil.

Q When you were employed at Williston & Beane did you handle any work for Allied Crude Vegetable Oil and/or Mr. Tino DeAngelis?

A Yes, I did.

Q What kind of work did you do at Williston & Beane in that connection?

A Well, initially as a floor clerk, the same thing I did at Comenzo, and then later on as a broker, I would execute the trades myself.

Q Did you know a Mr. James Comenzo in 1962 and 1963?

A Yes, I did.

Q Who was he?

A He was Williston's floor broker before I was;

A Yes, they were.

Q Did you know in 1963 which floor brokers were employed by which brokers and future commission merchants?

A Yes, for most of the brokers that were there.

Q Do you know whether Merrill Lynch employed anyone who was a floor broker?

A Yes, I do.

Q In 1963?

A Yes, I do.

Q What was the name of the floor broker employed by Merrill Lynch?

A Jack Place.

Q Did you know who any of the customers were of the concerns for whom the floor brokers traded on, the floor of the Produce Exchange during 1963?

A Not in fact, but in theory it was fairly well common knowledge. Just as everyone knew that most of the business that I was doing was for Allied, we would know on that same basis.

Q Did you ever have discussions with the other floor brokers about Allied or Tino DeAngelis?

A Questions would come up from time to time, but for the most part, no.

Q What kind of questions would come up?

Q Is this settlement price used, to your knowledge, in figuring out the variation margin at the end of each day?

A Yes, it was.

Q With respect to the buying at the close that we were referring to in the last few questions, is that buying atthe close take place during this short period you just described?

A Yes, it did.

Q To your knowledge did that buying at the close have any effect on the settlement price?

A Yes, it did, certainly.

Q What was that effect, sir?

A Well, if the market went up four points in the last two minutes or one minute of trading, whatever it was, it would affect the settlement price by putting it this much higher. Even if we arbitrate it down two points, it would still be two points higher than what it was previous to that close.

Q To your knowledge, did this effect on the settlement price occur regularly during 1963?

MR. O'DONNELL: Objection, your Honor. He said he did his buying at the close in the last part of the fall of 1963. That is his testimony. This question

elr Fontana-direct [1088]

is about all of 1963.

THE COURT: All right.

MR. HARRIS: I will amend the question.

Q To your knowledge during the last part of the fall of 1963 did this buying at the close affect the settlement price on a regular basis?

A Yes, it did.

Q Maybe we can pinpoint the time a little more specifically, Mr. Fontana. When you said in the last part of the fall of 1963, can you remember what months you are referring to?

A I would say that it started to happen in the middle of October.

Q Do you know who Mr. Carl Berg was in 1963?

A He was the secretary of the exchange, wasn't he?

Q Did you ever observe Mr. Berg being present on the floor of the produce exchange during the trading hours?

A Yes.

Q What were those trading hours?

A 10 to 2:15 or 2:30, I believe.

Q Was Mr. Berg there on a regular basis in 1963?

A He was there almost every day on the floor

of the exchange.

Q Was Mr. Berg there on a regular basis in October and November, 1963?

A Yes, he was. He was there on a daily basis because his office was about five feet away from the floor.

Q At the time when you were buying at the close during the October, November, 1963 did you ever observe Mr. Berg being present on the floor?

A Yes, I did.

Q Mr. Fontana, do you recall ex-pit trading taking place during 1963?

A Yes, I do.

Q Do you recall anything about the volume of ex-pit trading during that year?

A It was very high. Much higher than the previous year.

Q How were you made aware of the volume of ex-pit trading during 1963?

A They were posted on the board on the floor of the exchange.

Q Did the floor brokers receive commissions in the course of or as a result of ex-pit trading?

A Yes, they do, mostof the times.

elr Fontana-direct [1092]

Q Do you recall whether there was a lot of selling going on during the last few days?

A Yes, the last few days before the contracts were closed, yes, there was quite a bit of selling going on.

Q Do you recall anyone in particular being a large seller at that time?

A Yes, Merrill Lynch was the largest seller on the floor.

Q Have you ever heard the expression, selling the market down?

A Yes.

Q Can you explain what that means?

A That means that you are selling at a price for the purpose of getting the market down. Instead of waiting for getting the best price you will sell a contract at a price below the one you previously sold it at.

Q Do you recall whether anyone was selling the market down in the last few days before the close in November, 1963?

A Merrill Lynch was.

Q During the summer and fall of 1963, Mr. Fontana, do you recall having any conversations with

it. They certainly have a right to bring it up. You brought it into the case.

The objection is overruled.

Q Am I correct that your decision to enter this business was the result of a personal relationship with Tino DeAngelis?

A Yes, it was.

Q Would you mind going into the details, your mother-in-law and Mr. DeAngelis have been friends for many, many years?

A That's right.

Q And Mr. DeAngelis was at your wedding, am I correct?

A That is correct.

Q In a way you look upon him or looked upon him as a father-in-law?

A True.

Q Despite this close relationship with Mr. DeAngelis, is it fair to say that you never knew what Mr. DeAngelis, Allied's total position was in contracts on the New York Produce Exchange in 1963?

A Yes, it is.

Q You did not know that?

A I did not know that.

Q Is it a fact that after the market was closed

and Allied had gone into bankruptcy and it came out that DeAngelis had 90 per cent of the open position and Ira Haupt was carrying 90 per cent of the open position, you were surpised at how large those figures were?

A Yes, that is true.

Q It was far beyond what you had anticipated?

A Yes, it was.

Q You were on the floor every day?

A Yes, I was.

Q And you were watching Mr. Goldfogle and Mr. Comenzo and Mr. DeAngelis and you were still surprised that the position was this sizable?

A Yes, I was.

Q Mr. DeAngelis never disclosed his position to you?

A That is correct.

Q Is it a fact that you knew as an employee of Williston & Beane what position Williston & Beane was carrying for Allied?

A Yes, I did.

Q Is it a fact that you did not disclose that position to any other party?

A Yes, that is true.

Q And that would include my client, Continental Grain; am I correct?

A Correct.

Q And Mr. Minnerop's client, Merrill Lynch?

A That is correct.

Q And Mr. Fryer's client, Bunge?

A That is correct.

Q And it would also include the officials of the Produce Exchange?

A That is correct.

Q Since I mentioned Williston & Beane, Williston & Beane was also acting as a clearing broker carrying some contracts for Allied; am I correct?

A Yes, they were.

Q Like Haupt was?

A Correct.

Q Except that at the end Williston & Beane are about one-tenth the contracts that Haupt did; am I correct?

A That is correct.

Q Would it be fair to say that it would never occur to you in your wildest dreams that Ira Haupt would be carrying over 8,000 contracts for Tino DeAngelis?

A I never thought so.

Q We have talked about how you never disclosed Williston & Beane's position to anybody else and didn't know what Allied's overall position was.

Is there some reason for this secrecy?

A It is just a protection of your customer, not to let anybody know his position in the market when he is a major factor in the market.

Q Is that an important consideration, secrecy on these markets?

A Secrecy of a customer's position is important to a customer.

Q Did it ever occur to you, sir, that one of the reasons that Mr. DeAngelis was using four different floor traders was to help maintain the secrecy of his position?

A Possibly, yes.

Q You mentioned that there were 15 to 20 floor traders on the floor each day; am I correct?

A That is correct.

Q Is it a fact that you knew that Continental Grain Company did not have an employee who was a floor trader on that Exchange?

A That is not true. I thought they did.

Q Did you know a man by the name of Michael Langdon?

A Yes, I did.

Q Did you know Mr. Michael Langdon was an independent floor broker?

A No, I did not. I thought he was employed by

Continental Grain.

Q So that you thought he was an employee of Continental?

A That is what I thought.

Q You thought he was doing business only for Continental?

A No, there was no one on the floor that really did business for only one person. It always involved giving up to other brokers. I just thought that Michael Langdon was employed by Continental Grain.

Q Did you ever discuss Allied's position with Mike Langdon?

A No, I did not.

Q Did you ever discuss Allied's buying with Michael Langdon?

A No, I did not.

Q Sir, as one of those floor traders who was buying for Allied, were you trying to corner the market?

A No, I was not.

Q Were you trying to execute a squeeze in the market?

A No, I was not.

Q When you talked to Mr. DeAngelis, did he ever express in words or in substance to you that his intent

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was to corner or squeeze the market?

A No, he did not.

Q Is it a fact that you believed then that Mr. DeAngelis was not trying to effect a corner or a squeeze?

A Yes, it is.

Q And you still believe that?

A Yes, I do.

Q In fact, when you went to work on the Produce Exchange, do you remember an incident in 1962 when a short had difficulty getting the physical commodity to deliver and Mr. DeAngelis actually gave the physical commodity to that short?

A Vaguely.

Q You remember that story?

A Yes.

Q And that was inconsistent with anybody who was trying to squeeze; am I correct?

A That is correct.

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gr 1 Fontana-cross [1111]

Q You testified that there were these four floor traders who would receive orders from DeAngelis.

You were aware, sir, weren't you, that if you big against one another, that it could drive the price up?

A Yes.

Q And is it a fact that you made it your practice not to bid against one another?

A Yes, that's true.

Q And is it a fact that it was your intention not to drive the price up?

A Yes, it is.

Q You weren't trying to manipulate the prices, were you?

A No, I wasn't.

THE COURT: Mr. Fontana, you and Mr. Liman are using the term floor broker and floor trader.

Are they the same thing?

THE WITNESS: Yes.

THE COURT: All right.

MR. LIMAN: I'm sorry, your Honor.

Q Based on your knowledge of Mr. DeAngelis' business, is it fair to say that you believed that there was a legitimate reason for his making purchases on the

gr2 Fontana-cross [1112]

exchange in the quantities that you and Comenzo and others were getting?

A Yes, I did.

Q What was that reason?

A He had the oil sold or needed the oil for an order.

Q Did you know Mr. DeAngelis' company to be the largest exporter or supplier of oil for export in the country?

A Yes, I did.

Q You believed from your conversations with him that he accounted for approximately 80 per cent of all of the vegetable oil exported in the United States?

A Yes, I did.

Q And you believed that Mr. DeAngelis was engaged in a hedging operation, getting oil for deliveries; am I correct?

A Yes.

Q Did you ever engage in any wash sales?

A No, I did not.

Q Did you ever see Mr. Comenzo or any of these other people like Goldfogle engaging in wash sales?

A No, I did not.

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Q Did you believe in 1963 that the price of cottonseed oil on this exchange was responding to normal market factors?

A Well, if I remember correctly, there was a lot of rumors at the time. The soybean oil market was going up and consequently, so was the cottonseed oil.

Q The rumors were of a bullish nature?

A Yes.

Q Would you tell thejury what these rumors were?

A There were rumors that certain countries were going to buy oil and the biggest factor was at the time Russia had just bought an awful lot of wheat and the rumor was they were going to buy oil also.

Q Did you read the Commodity News Service and other trade publications?

A Yes, I did.

Q It was part of your business really to know what the market conditions were; am I correct?

A Yes, it was.

Q Is it a fact that the trade publications which were following this market headlined the fact that Russia was rumored to be buying oil and that there were

other export sales taking place?

A Yes,sir.

Q Is it a fact that in not a single one of these publications was there ever a suggestion that a manipulation, a corner or a squeeze was taking place on the New York Produce Exchange?

A That's correct.

MR. HARRIS: I think it should be limited to whatever publications he personally saw. I don't think he can speak for whatever exists in the public domain.

THE COURT: I think that's correct.

Q When you said that that is a fact, your answer was limited to those publications which you read; am I correct?

A That is correct.

Q And you read the publications dealing with this market; am I correct?

A Yes, I did.

Q Did you ever suggest to Mr. Berg or any other official of the produce exchange that there was a manipulation or a corner or a squeeze taking place?

A No, I did not.

Q Or that you were engaging in any activity that you considered illegitimate?

A No.

Q Did you believe you were engaging in any illegitimate activity?

A No.

Q There's been some talk about buying at the close.

Is it a fact that Mr. DeAngelis gave you orders to buy at all times in a day, am I correct?

A That is correct.

Q Is it also a fact, based on such experience as you have in the commodities markets, that there is usually some order being executed in those last minutes of trading?

A Yes, there are.

Q That's why the clearing price is based on the price then; am I correct?

A That is correct.

Q You mentioned something about arbitrating down the closing price. I think I wrote the words down.

What do you mean by arbitrating down the closing price?

A That would be the clearing house for their use in the settlement price. There was sometimes a range of six or seven points on the close. If you

have a range of six or seven points, they can't set the margin at any one point, what the margin should be. So they pick a specific price within that range to settle the contracts out for that day for margin purposes.

Q So that the clearing assocaition, not the produce exchange, but the clearing association has some discretion on the price?

A I woudln't --

Q Or don't you know who it is?

A I'm not really sure who settled it. I readlly don't know.

Q You say that the fact that you bought at the close would have a tendency to lead to an increased price at the close; am I correct?

A That's correct.

Q And it could go down the next day if there wasn't a demand for it; am I correct?

A That's correct.

Q If the closing price was higher, went higher than the day before, and if Allied was long,would that mean that the clearing members for Allied would get additional margins?

A Yes, it would.

Q They would get variation margins from the

elr Fontana-cross [1118]

Q Nobody ever explained to you?

A No, they did not.

Q And can you think of any who would have a greater interest in the lower price at the closing than somebody who was short?

A No, I can't.

Q I want to come to the last days of the Allied empire.

You were asked about when the price began dropping, do you remember that, on your direct?

A Yes.

Q Do you remember that the downturn started on Friday, November 15?

A Yes.

Q And in fact, so there are no secrets in this examination that Haupt took of you in 1985, you were asked about that, and you said it began on the 15th?

A That's right.

Q Have you looked at that examination lately?

A I just glanced at it, that is all.

Q So that your memory is somewhat refreshed from having read it?

A Yes.

Q Is it a fact that you had no premonition that

the market would be going down on the 15th?

A That's correct.

Q And is it a fact that the downtown on the 15th was only one-sixth of one cent?

A Oh, I don't remember that.

Q You don't remember that?

A No, I don't remember that.

Q You spoke to Mr. DeAngelis on the 15th, do you remember that?

A I spoke to him every day.

Q Do you remember that he was calm on the 15th?

A Not really, but okay. He was always calm, really.

Q If it a fact that you expected, based on all of your readings, your talking about DeAngelis, your talking to people on the floor, you expected the market to recover on the 18th?

A Yes, I did.

Q And therefore you were surprised when the market went down on the 18th again?

A Yes, I was.

Q In your direct testimony you said that a price limit of 25 points, or a quarter of a cent, was set on the 15th.

Would it refresh your recollection if I told you it was set on Monday, the 18th?

A Yes.

Q On the 19th, which was theTuesday, there was this limit of one-quarter of a cent in effect, am I correct?

A Yes.

Q And you understood that this was protecting Mr. DeAngelis who had a long position against a further decline if the market was going to go that way?

A Yes.

Q Is it a fact that you had no advance notice of the fact that Allied was filing for bankruptcy on November 19?

A That is true.

Q Despite your relationshiop with Mr. DeAngelis this came as quite a shock to you?

A Yes, it did.

Q Is it a fact that you had not been concerned that the decline on the 15th and the 18th would drive Mr. DeAngelis into bankruptcy?

A No, I did not.

Q You did not have concern?

A No, I didn't.

we ought to be clear about it so the jury knows what we are talking about.

Q Mr. Fontana, I believe you testified on cross that you had seen Mr. Anderson once on the floor of the Produce Exchange, is that correct?

A Yes, I believe so.

Q He was not a floor trader, thought, was he?

A No, he was not.

Q I take it that you didn't know Mr. Place any better than any of the other floor brokers, did you?

A No, I did not.

Q In fact, you knew several of them better?

A Yes, I would say so.

Q Once again, let's see if we can clarify this term that you used, selling the market down.

I take it by that you mean that sellers would sell before seeing if the market would raise again, sell at a lower price; is that correct?

A Yes, they would.

Q Isn't it a fact that the reason that that was occurring was because there were more sellers than there were buyers and they were anxious to sell?

A Yes, that is correct.

MR. MANNING: No further questions.

Q Do you recollect whether anybody else at the meeting referred to those two letters?

A I don't recall that, no.

Q Mr. Boyer, your notes refer to the fact or the conclusion that the imposition of scale-up of original margin by the clearing house will not adversely affect the best interests of the Exchange. Was that a subject discussed at the meeting of September 23rd?

A That was the sense of the meeting. I'm not even certain at this point that the conclusions were recorded at the meeting. As a matter of fact, they may not have been. This was the sense of the meeting, the important point of the meeting as far as I was concerned.

Q Do you recall anything about a discussion as to what the best interests of the Exchange was or was not, taking place at that meeting?

A No, I don't.

MR. O'DONNELL: I also object to it, your Honor, on the ground that it doesn't purport to be a question asking this witness what was stated or happened at the meeting.

MR. LIMAN: Your Honor, I take it also that the same limiting instruction applies to everybody who was not at the meeting.

THE COURT: As I understand Mr. Boyer's testimony, he has no present recollection. Therefore, even apart from the objection that has been raised, I don't think that it would be probative. He has no present recollection.

MR. HARRIS: Then I would like to offer the yellow sheet as past recollection recorded.

THE COURT: All right.

MR. O'DONNELL: Your Honor, may I have voir dire on that?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. O'DONNELL:

Q Mr. Boyer, do I understand that your present recollection is that you made some of these notes subsequent to the meeting, particularly the conclusions portion?

A I think that the conclusion was written subsequent to the meeting. I don't know exactly how long after

the meeting it was recorded.

THE COURT: That is what you are offering, isn't it?

MR. HARRIS: I'm offering the sheet which has his notes, your Honor, the conclusions on the sheet. I would like to offer the entire sheet which has his notes.

THE COURT: All right.

Q With respect to the notes that you have above the conclusion section, as I understand it, you do not recall at this time whether you actually made those at the meeting or also subsequent to the meeting; is that correct?

A I would expect that they were made at the meeting or immediately subsequent to the meeting. The conclusion is probably somewhat subsequent to the rest of it.

Q Keep your voice up so the jury can hear you.

Is it correct that none of these notes was shown by you to any official of the New York Produce Exchange who was present at the meeting, namely, Messrs. Berg, MacDonald and Fashena?

A That's correct.

Q Nor did you show these notes to any other official of the New York Produce Exchange?

A I did not.

Q Is it also correct, Mr. Boyer, that these notes do not purpose to be a transcript of or a running statement of what various people were saying at the meeting?

A It does not purport to be.

MR. O'DONNELL: Your Honor, I would object to the offer of the notes. I don't believe it falls

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within the exception to the hearsay rule for recorded recollection.

THE COURT: The objection is overruled.

MR. LIMAN: Would the clerk notice on the document that it is being received only with respect to the exchange, Messrs. MacDonald and Fashena.

THE COURT: This whole testimony only relates to that. That has been very clear to the jury.

MR. LIMAN: If I can, I want it on the document.

THE COURT: All right.

MR. HARRIS: Perhaps we can mark the yellow sheet as Exhibit 15A for identification since it's part of a group of materials that has been marked as 15 for identification.

THE COURT: You are not offering anything but --

MR. HARRIS: No.

MR. O'DONNELL: Do I understand, your Honor, that just the first portion of the yellow sheet is being received?

THE COURT: As I understand it, I am allowing all of it in as past recollection recorded.

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As I understand Mr. Boyer's testimony, he took those notes either at the meeting or immediately afterwards and he put down the conclusions afterwards.

So that the whole document, it seems to me, is admissible.

(Plaintiff's Exhibit 15A was received in evidence)

MR. O'DONNELL: Since so much time has been devoted to the notes, your Honor, may I request Mr. Harris through you to read the exhibit to the jury?

MR. HARRIS: I was going to ask Mr. Boyer to, your Honor. It's in his handwriting. Perhaps he's the best able to read his handwriting. Whatever the Court would prefer.

THE COURT: All right.

MR. O'DONNELL: I believe this is a correct typewritten version of the notes.

MR. HARRIS: I have that, too.

If there's an objection to Mr. Boyer reading it, I will be glad to read it, your Honor.

THE COURT: I really don't understand what the point is. Get it before the jury, Mr. Harris.

MR. HARRIS: Can we agree that this is an accurate restatement of the document?

MR. O'DONNELL: Yes.

MR. HARRIS: These are Mr. Boyer's notes.

(Mr. Harris read from Plaintiff's Exhibit 15A in evidence to the jury)

DIRECT EXAMINATION CONTINUED

BY MR. HARRIS:

Q Mr. Boyer, perhaps since we have had reference now to scale up margin, you could explain what a scale up margin is and what its purpose is.

A The scale up margin is a system of margining contracts under which positions are set forth. We'll say what we would consider a small position, 500 contracts or less. That would be margin at probably a minimum rate of margin or what we consider to be a minimum.

Subsequently a clearing member who carried 500 we will say to a thousand contracts would be required to pay more money on those 500 contracts. He would pay the minimum on his first 100 contracts. He would then pay an additional increment, the minimum plus an additional increment on the second 500 contracts, and that would be continued for probably three or four or more brackets.

Each 500 contracts over and above the 500 minimum would be at a higher rate of margin.

to attend that meeting?

A I believe that Mr. Weinstein invited Mr. Anderson. Mr. Anderson had been nominated to serve as a director of the Association, of the New York Produce Exchange Clearing Association and would have been elected on the -- it was expected that he would become a director at the annual meeting, which would take place on the first Tuesday in December of 1963.

Q Do you recall the discussions held that morning at the Board meeting?

MR. LIMAN: Your Honor, I object to the morning meeting on behalf of my client, Mr. Vogel and Continental Grain. There is an afternoon meeting I have no objection to, because that is the one that Mr. Vogel attended. I object to the morning meeting.

MR. O'DONNELL: I have the same objection on behalf of New York Produce Exchange, Messrs. Fashena and MacDonald.

MR. FRYER: I also object on behalf of Bunge and Klein.

THE COURT: Mr. Harris?

MR. HARRIS: There was a pending questin, your Honor.

THE COURT: You have an objection.

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will, your Honor.

THE COURT: As long as his explanation is one in which everybody agrees is correct, the objection is overruled.

Q I think the question was, Mr. Boyer, what would happen under the rules of the clearing association if Haupt's contracts were liquidated in the marketplace and the monies received were insufficient to meet Haupt's obligations to the clearing association.

A In such an event the clearing association would under its bylaws first use the original margin of the clearing member on deposit with the association. Each clearing member in addition deposits a certain sum of money in what is known as a guarantee fund. That is pooled and deposited or invested by the clearing association.

The defaulting members guarantee fund deposit wouldn't be utilized, afterthe original margin was exhausted. Each clearing member held five shares of stock, if that stock could be sold, the proceeds from that sale would be used. If this still did not satisfy the obligations of the defaulting clearing member, the surplus of the association would be used, in the discretion of the directors.

elr Boyer-direct [1231]

This being also not sufficient, the guarantee funds of all the clearing members would be used, of the remaining clearing members, the guarantee funds. The guarantee funds wouldn't be restored by assessment of the clearing members, other than defaulting member.

Q Do you remember how much surplus the association had on hand on November 19, 1963?

A I really don't, Mr. Harris, no.

Q Do you recall whether it was in the billions of dollars?

A No, it was not. It was in the hundreds of thousands.

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Q In fact, is it not the case that as you described the matter yesterday, that that was how it worked with respect to the coffee or cotton or sugar or some other commodity and not the cottonseed oil market?

A Yes.

Q Isn't it the fact, Mr. Boyer, that the clearing association bylaws provided for the members of the clearing association to furnish to the clearing association these buy, sell memo slips?

A Yes, they were prepared to the specifications of the clearing association.

Q And they were not furnished by either the New York Produce Exchange or by members of the New York Produce Exchange to the association unless those members also happened to be members of the association?

A That's correct.

Q Is it also correct that with respect to the payments of variation margin each day by the clearing association to certain members and the proceeds that were received from other members which balance out to zero each day for the clearing association, that the clearing association did not look to the New York Produce Exchange in any way and the New York Produce Exchange had no

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statement.

Q But Ira Haupt in 1963 never had to do that, did it?

A No, sir.

Q All right.

Did you ever doubt in 1963 Haupt's financial ability to meet its financial responsibility to the association?

A No, I did not.

Q Itwas known then, was it not, Mr. Boyer, as a large and knowledgeable brokerage house?

A It was to me; yes, sir.

Q Did Haupt in 1963, prior to the debacle at the end of November 1963, ever default on the payment of a margin, either original or variation?

A No, sir. Our experience with them was that they were always prompt and itmely.

Q Is it also true that in 1963, during the summer and fall, after you became managing director of the clearing association, that some millions of dollars was paid by the clearing association to Haupt in variation margin as the cottonseed oil rose in price on the exchange?

A Yes, sir. Haupt was carrying a net long

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information that you and the other administrative personnel of the New York Produce Exchange Clearing Association had was the net position of the member in relation to the respective months and that you did not know who or whom the members held that position?

A Yes, we knew and were concerned with the net positions of the clearing member and had no knowledge of the customers of that clearing member.

Q And so, for example, in the summer of 1963 Haupt, of course, was one of the members of the clearing association and you as an administrative man at the clearing association knew its net position but did not know for whom or howmany customers it was acting; is that right?

A That is correct.

Q Is it also true that you did not give this type of information to the New York Produce Exchange or its officials?

A Thatis true.

Q This was confidential information to enable the members and their customers to keep to themselves what their respective positions were; is that not so?

A Yes, sir.

Q Beginning on November 14th, I would like to direct your attention now to, I guess it is Thursday, November 14, 1963, Friday, November 15th; Monday, November 18th; Tuesday, November 19th; and Wednesday, November 20, 1963.

After November 14th or beginning with November 14, 1963, am I right that the New York Produce Exchange did not ask you for any information about positions taken by Association's members'customers in conttonseed oil futures?

A The New York Produce Exchange did not, no.

Q As we previously said, if they had, you could not supply that information because you didn't have it, you only had it for the members and not for their customers; is that right?

A If a formal request had been made, Mr. O'Donnell, the Board of Directors would have had that decision to make, and not me.

It would be a decision of the Board of Directors based on the request by a committee or other official body of the Exchange as to whether or not the information would be given to them.

Q But even as of that time in November 14th to 20, 1963, you would not have any information to supply except with respect to the net positions of the members themselves and not their customers; is that right?

A Yes, sir.

Q Are you aware, Mr. Boyer, that on November 14, 1963 the New York Produce Exchange, as distinguished from the New York Produce Exchange Clearing Association, did adopt, and I believe on November 15th send out a position call to members of the New York Produce Exchange?

A I don't think I was familiar with that, Mr. O'Donnell.

Q All right, sir.

Q Is it right, Mr. Boyer, that at no time prior to November 19, 1963, did you know the names, yourself, of any of Haupt's customers in the cottonseed oil futures market?

A That is correct.

Q And did you first hear of Allied Crude Vegetable Oil Refining Company on November 19, 1963?

A My best recollection is that it was immediately prior or during the meeting of the adjourned portion of the meeting on the evening of the 19th.

Q And you learned at that time, or you knew at that time, on November 19, 1963, that the price of cottonseed oil futures on the New York Produce Exchange was declining substantially, was it not?

A Was declining, yes, sir.

shorts, would it not, not by the longs, because you were terminating contracts and preventing the shorts from getting the benefit of additional price declines.

MR. HARRIS: Your Honor, the shoe is on the other foot now. Can we talk about concerns that were expressed at the meeting or whether these are private concerns that Mr. Boyer had at the time or later or what? There is nothing in the minutes that talks about concerns by Mr. Boyer.

THE COURT: I think that is true, Mr. O'Donnell, and I think that for the edification of the Court and the jury that the matter has been cleared.

MR. O'DONNELL: I think so, too, your Honor. Thank you.

Q With respect to the ex-pit trade that you referred to, Mr. Boyer, in response to Mr. Harris' questions, you mentioned that Ira Haupt, I think on November 18th, just a day before this meeting, took on an ex-pit transaction where it committed itself for 2,000 or more contracts, is that right?

A Did you say took on?

Q Yes, that is what I said.

A What happened was that there was a short position of 2,510 contracts. Now, you see how that would effect

the net. And that 2,510 short contracts was withdrawn from Ira Haupt and transferred to another house, and this exposed more of what you might call the gross position on the long side of Haupt.

Q So it made Haupt --

A It did increase Haupt net long position by 2,510 contracts. That was the effect of it, sir.

Q So if Haupt had had -- Haupt in effect had had 8,000 contracts, let's say, on November 16th before this transaction, if they had had 6,000 contracts on the long, they also would have had 2,500 on the short side, so they would have ended up with a 3,500 net position, is that right?

A That is what the effect of it would be. If you have a larger long position than short, than your shorts within the same month, the shorts don't appear on the Clearing Association's books because it is the net position that we are interested in and the man would be net long in that month.

Q So that as late as November 18, 1963 Ira Haupt & Co., despite the declining market, was increasing its long position in the manner you have explained, by over 2,000 contracts, I think actually it was 2,500 contracts?

A The position, Mr. O'Donnell, was already in Ira

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Haupt. It was the withdrawal of 2,510 contracts from the short side that increased, seemed to cause the increase in the net long position. If you were looking at the gross position you might see a slightly different picture. You understand me, sir. I don't know what the circumstances were. It is certain that when this ex-pit transaction took place it exposed Ira Haupt to a tremendous margin call.

Q If that ex-pit transaction hadnot taken place at the time the Exchange closed down, when Ira Haupt was long over 8,000 contracts, if I followed your testimony, they would have been long only the difference between 8,000 and 2,500 or 2,000, which would have been 6,000 contracts.

A Somewhere in the vicinity of 6. But that would have been the position that the Clearing Association was then responsible for; it would be the lower figure.

Q Because of this ex-pit transaction by Ira Haupt on November 18, 1963, the Clearing Association was exposed, if Ira Haupt defaulted to the tune of 2,000 or more additional contracts?

A That's right, sir, the Clearing Association.

MR. HARRIS: May I object? Mr. O'Donnell keeps putting something into the questions which are not in the answers. Ira Haupt was involved in the ex-pit transaction,

elrf 9 Boyer-cross [1276]

but there has been no showing that --

MR. O'DONNELL: I stipulate that it was involved.

MR. HARRIS: There has been no showing --

it was a broker.

Q With respect to meetings of the New York Produce Exchange Clearing Association Board of Directors --

THE COURT: If you are going into another subject, I suggest w adjourn until 2:00 o'clock.

MR. O'DONNELL: I will be very brief after lunch, your Honor.

(Jury left courtroom.)

(Luncheon recess.)

Q That trade was between Ira Haupt and Ralph Peters & Company, wasn't it?

A It was,yes, sir.

Q And as a result of increasing its position by some 2500 contracts on November 18, Haupt had to pay the exchange clearing association additional margin, am I correct?

A Youare correct, sir.

Q Would you tell the jury how much this increase resutled in their paying?

A May I look at the exhibit again?

Q Yes, sir.

A Because it need not have been a complete result of the 2510 contracts. There could have been other purchases and sales involved.

Q Was it approximately $5 million, as you recall it?

A There was original margin required, additional original margin in the amount of $2,454,000. As a result of the ex-pit transaction -- excuse me, I had it wrong --

Q Suppose I show you your Exhibit 16E for identification which are the minutes of that --

A This was on the 18th, sir, not the 15th, this transaction.

Q The transaction took place on November 18?

A So my prior figure was incorrect. The additional margin requirement was $2,513,200, and as a result I assume almost completely of the ex-pit transaction, he owed this additional variation margin of $2,433,652.

Q Do you remember if I showed you Exhibit 16E for identification, which are the minutes of your morning meeting on the 19th of the clearing association that you reported to the association that as a result of this ex-pit between Haupt and Peters, that Haupt had become obligated for an additional 5 million in variation and original margin?

A Approximately I said, yes, sir.

Q And that was correct?

A Yes, sir.

Q So far as you know, did Ira Haupt engage in this ex-pit transaction with Peters on the 18th of its own free will?

A I have no way of knowing that. I would assume he was a party to it.

Q You met with Haupt representatives in the

touch with my office, yes, sir.

Q That meeting began around 4:00 o'clock, as you recall it?

A As I recall it, it was somewhere around 4:00, 4:30; I have it. 4:00 p.m,yes, sir.

Q The meeting began after Allied had filed its bankruptcy petition?

A Yes, that is when I was apprised of that fact.

Q There were two Haupt representatives at that meeting, Mr. Kamerman and Mr. Kaufman, am I correct?

A Yes, there were two representatives from Ira Haupt. Well, they appeared at the meeting. They weren't at the meeting for the duration. They were invited to participate and explain the situation as they understood it.

Q You met at that meeting a man by the name of Harold Vogel; is that correct?

A Yes, sir. I'm not even certain that we were formally introduced. Maybe somebody said, this is Mr. Vogel.

Q Did you even know he was with Continental Grain Company?

A I don't recall that I did, no, sir.

Q Do you recall what Harold Vogel said at the meeting?

elrf 5 "Weinstein" 1372

"Q Do you recall which banks they referred you to?

"A Well, all the banks. The Chase, particularly.

"Q Do you recall if you checked with the Chase?

"A I do not.

"Q Do you recall any banks that you checked with?

"A [illegible]. I don't recollect any at all; whether it was the Chase or the Manufacturers Trust or any of the banks in Jersey.

"Q Mr. Weinstein, you said he was not distributing any detailed information. Did you ever, either prior or during the time that Metropolitan handled Allied's account request any financial information from Allied or DeAngelis?

"A I couldn't say definitely how we were, that we demanded information by mail, by request in wring or if it was verbal, or what; but we did not get any, any detailed statement, cash or financial statement from 'im.

"Q Mr. Weinstein, during the period from the time Metropolitan first took up the Allied account up to November 19, 1963 did anyone ever tell you that Allied would be unable to meet its obligations in respect of the commodities futures contracts it purchased?

elrf 6 "Weinstein" [1373]

"A No, not a hint or any suspicion -- suspicion was cast until the last few days.

"Q You say the last?

"A The last few days.

"Q The last few days. Can you tell me what happened in the last few days that cast suspicion?

"A The rumors became heavier.

"Q Can you tell me what rumors, Mr. Weinstein?

"A Rumors. Rumors to the effect that he may not be able to meet his obligations.

"Q You say the last few days. Can you tell me what period you referred to there?

"A The last few days. Say from the 15th to the 16th of November.

"Q Mr. Weinstein, at that time when the rumors became heavier did you attempt to verify the rumors in any way by contacting DeAngelis?

"A No."

The next thing is page 47, line 3:

MS. KAYE: I think I will continue right where you left off. That picks up on the page 35, line 4:

"Q Did you seek any --

"A The only time that the rumors were substantiated is when the check was bounced and came back.

elrf 12 "Weinstein" [1379]

own customers.

"Q Mr. Weinstein, the scale of margins that you referred to, dit that apply to the amount of margin which a member of the Clearing Association was required to deposit with the Clearing Association?

"A Yes.

"Q Did that scale of margin also apply to the amount of margin which a member of the Clearing Association was required to obtain from his customers?

"A It was natural to expect that the brokerage house is going to charge his own customers the same amount of margins that he is required to deposit with the clearing house."

ge 57:

"Q . Weinstein, during 1963 did you ever have occasion to discuss with anyone at Haupt the question of original margin rates imposed by the Clearing Association?

"A The only conversation that I remember that I had with a representative or manager of the department that had charge of this particular transaction was I think sometime in October. I'm not sure what month it was, but it was just a few months before the collapse, or thereabouts. That was the manager of Haupt & Co. who had charge of the account of Allied. This man came

elrf 13 "Weinstein" [1380]

in to see me as the chairman of the Board together with Mr. Goldfogle, who was the floor broker for them, and he asked me at the time not to increase the rate of the margins. I told him that the increase of the margins will stand and I also explained to him the reason why we are doing it, as a protection for the clearing house, protection for the members of the clearing house, and particularly it is a protection for himself, for his own self and his relationship with his account, and I warned him how serious the situation is and that he should see that the account is fully protected or secure full protection for the account.

"This conversation lasted for three-quarters of an hour and that was the only conversation I ever had with anyone from the firm. This was very serious. I warned him about the possibilities, the various things that might happen. I said the greater the margin, the less the danger there is of losing a lot of money. That is all."

after that.

"Q Mr. Weinstein, prior to your meeting that you have described, did you know Mr. Goldfogle?

"A Of course I did. I have known Goldfogle for years.

"Q Mr. Weinstein, just as to how this meeting came about, did Mr. Goldfogle contact you and ask if he could come in and talk to you?

"A I don't recollect exactly whether Goldfogle called up or Mr. X called up, but an appointment was made and they came in to see me.

"Q Mr. Weinstein, you said that the man who came to see you from Haupt asked you not to increase the rate of margins.

" Were you referring to the escalated or scale-up margins?

"A Yes."

MR. HARRIS: I would like to continue right along from there:

"Q You also said you warned him how serious the situation was, and he should see ot it that the account was fully protected.

"Can you explain to me in a little more detail what you had reference to when you said that to him?"

gwrf 4 "Weinstein"

MR. SMITH: Objection, your Honor. This calls for the witness' state of mind and has no bearing on my clients or indeed on anyone's clients.

MR. HARRIS: If you read the answer, your Honor. I don't know if you have a copy of it.

MR. SMITH: The answer is neither responsive to the question nor admissible, your Honor.

MR. HARRIS: Right here.

They chose to open the whole subject up by reading the material and they want to cut it off half way through.

THE COURT: The objection is overruled.

MR. HARRIS: I will read the question again:

"Q You also said you warned him how serious the situation was, and he should see to it that the account was fully protected.

" Can you explain to me in a little more detail what you had reference to when you said that to him?

"A Well, it was public knowledge that they were carrying a very large open interest for that account. The larger the open interest, the more serious it becomes in case of a collapse of the market. It was public knowledge. Everybody knew about it.

"Q Mr. Weinstein, you also said you warned him also of the possibilities of the various things that might happen. Can you recall in any more detail what you warned him of?

"A The only thing I warned him, it was the collapse of the market, and he would not be able to get margin quickly enough to satisfy the Exchange requirements.

"Q Do you recall if there was any discussion at that meeting, Mr. Weinstein, of the size of the open interest in cottonseed oil?

"A No.

"Q Do you recall if there --

"A We knew it was big, big size, the biggest that was ever open for any one account.

"Q Mr. Weinstein, you said you knew it was big. When you said, 'we,' were you referring to yourself?

"A I mean we, the entire trade.

"Q Mr. Weinstein, did you ever have occasion during 1963 to request information from the manager of the Clearing Association or from the manager of the Produce Exchange as to the size or outstanding size of Allied's positions in cottonseed oil futures contracts prior to November 14th?

supposed to protect their interest and themselves and if they are being protected, then naturally the Exchange is being protected.

"Q Other than the scale-up margin, were any other actions or steps discussed at any meeting of the Board?

"A The Board had no power to discuss anything else, to take up anything else except that.

"Q Was the subject of imposing limits on positions ever discussed at a meeting of the Board from July to November 1963?

"A There were no limits proposed. It was the duty of the brokerage house to see that their account is in perfect condition and they are perfectly responsible for whatever commits they are making to him. We are trusting the brokerage houses to do this.

"Q I don't think I asked you, Mr. Weinstein, whether any were imposed. I asked you whether or not the subject of imposing limits was discussed.

"A And I am giving you the reason we didn't take it up. We expected the brokerage house handling the account to protect its own interest."

MR. HARRIS: Page 115, line 8:

"Q Mr. Weinstein, you indicated that these rumors" and these referring as the previous answer indicates, to

gwrf 4 "Weinstein" 1407

rumors regarding the general condition of Allied Crude -- "appeared in the last few days.

"Could you at all pinpoint this in time and possibly it would aid you if I indicated the 15th of November was on a Friday and the weekend was the 16th and 17th and that trading was suspended on the 20th, which was the following Wednesday?"

Then the question:

"Mr. Weinstein, my question is if you can recall when these rumors appeared?

"A The rumors appeared the last few days and possibly Friday was the first day we heard about it."

MR. HARRIS: Page 132, line 15:

"Q Earlier you had testified that when the open interest trading becomes larger, it becomes more dangerous because the fluctuations get too wild sometimes just because the open interest is too large.

"Did you mean by that, Mr. Weinstein, that it was the size of the open interest itself that could cause fluctuations?

"A No. It depends upon the holdings by any one individual of the open interest. If an open interest, say is 10,000 contracts and it is spread out to a large number of people, it is not dangerous. It makes it

gwrf 5 "Weinstein" [1408]

easier to trade, but when the 10,000 contracts are concentrated in the hands of one, one owning 65 or 70 per cent of the contracts, then it becomes very dangerous. It is the concentration of the interest.

"Q Mr. Weinstein, was it your opinion that this was the situation at some time in 1963 prior to November 14th?

"A Too much concentration."

MR. HARRIS: That's it. I have no further questions.

THE COURT: Anything further, Ms. Kaye?

MS. KAYE: Yes, I do, your HOnor.

THE COURT: All right.

MS. KAYE: Page 146, line 22:

"Q In any event, Mr. Weinstein, whether it was required by the Produce Clearing or not, was one of the purposes of the scale-up to encourage clearing members to obtain additional margin from their customers?

"A It was the clearing house's purpose to protect the interest of the clearing house and to protect the interest of the clearing house members and to do so they had to increase the margins, and that was the object of our increasing the margins and the rate of margins.

"Q Mr. Weinstein, you previously indicated that

gwrf 7 "Weinstein" [1410]

MS. KAYE: Page 175, line 2. This is continuing with Mr. Lobell's questioning, plaintiff's counsel.

"Q Mr. Weinstein, at any time subsequent to your meeting which you testified to with Milton Goldfogle and a representative of Ira Haupt, did you make any efforts to ascertain the financial condition of Ira Haupt & Co.?

"A I didn't.

"Q Did you request that any member of the Board of Directors of Produce Clearing make any effort to ascertain the financial condition of Ira Haupt & Co.?

"A There was no question about the financial condition of Ira Haupt & Co."

MS. KAYE: Page 178, line 13:

"Q Mr. Weinstein, earlier in your testimony you had indicated that a few days before the failure rumors had been circulating questioning Allied's ability to support its position and questioning its financial ability. Now, my question to you is: At that time, when these rumors began circulating, did anyone then raise questions to you with respect to Haupt's ability to support the position it had with Produce Clearing in the eventof financial failures on the part of Allied?

gwrf 8 "Weinstein" [1411]

"A At no time did they question the ability of Haupt."

MS. KAYE: Thank you.

THE COURT: Thank you, Mr. Kirsch.

Call your next witness.

grl

[1412]

MR. HARRIS: Mr. MacDonald.

D O N A L D V. M a c D O N A L D , called as a witness by the plaintiff, being first dulv sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BERNFELD:

MR. O'DONNELL: Your Honor, may I say to the jury at this time that Mr. MacDonald is somewhat hard of hearing and his right ear is his good ear, not his left ear.

Thank you.

Q Good morning, Mr. MacDonald, can you hear me?

A Yes.

Q Mr. MacDonald, were you employed by Fahnestock & Company, the brokerage firm, during 1963?

A I was.

Q Excuse me?

A Did you ask me if I was employed?

Q Yes.

A Yes, I was.

Q And your job with Fahnestock in 1963 was to manage their commodity department; isn't that right?

market in the United States on which cottonseed oil futures contracts were actively traded, is that right?

A Actively traded, yes.

Q And the New York Produce Exchange had its trading floor and its offices at 2 Broadway, in 1963?

A Yes.

Q Now, as president of the exchange did you generally preside over the meetings of the board of managers?

A The board of managers, yes.

Q And if you were absent the first person in line to preside over the board of managers meetings would be the vice president ofthe exchange?

A That is correct.

Q You know that Harold Vogel was the vice president of the produce exchange in 1963, isn't that correct?

A That is correct.

Q And you knew that as vice president, Mr. Vogel automatically became a member of the executive committee in 1963?

A That is correct.

Q During 1963, in the event that both of you

members of the exchange, isn't that right?

A That is correct.

Q And in connection with your duties as president of the exchange you automatically became a member of most of the committees, isn't that correct?

MR. O'DONNELL: Objection, your Honor. Again, it's not going anyplace. It's a stipulated fact.

MR. BERNFELD: I don't believe it's a stipulated fact that he was a member of most of the committees.

MR. O'DONNELL: The committees that he was a member of are stipulated.

MR. BERNFELD: Those committees that counsel stipulated to are within the stipulation. I am asking him if he was a member of most of the committees during 1963.

MR. LIMAN: I object to most.

THE COURT: I assumethat objection was coming from someplace. That objection is sustained. Most committees -- obviously that isn't clear enough, Mr. Bernfeld.

Q During 1963, Mr. MacDonald, didyou understand that the management of the exchange was the

responsibility of the board of managers?

A Yes.

Q Did you also understand that it was the responsibility of the board to see to it that the bylaws and the rules of the produce exchange were complied with?

A Yes.

Q Did you understand that the exchange had the duty to maintain an orderly market?

A Yes.

Q And to prevent manipulation?

A Yes.

Q And to prevent attempts to corner the cotton-seed oil futures market?

A That is correct.

Q The board was also charged with what you would call the duty to maintain an orderly liquid market, is that right?

MR. O'DONNELL: I object to the form of that, your Honor. I don't know what an orderly liquid market is.

MR. LIMAN: I guess it's oil that is liquid.

Q Let me rephrase the question.

elr8 MacDonald-direct

Mr. MacDonald, do you recall testifying prior to the trial of this action that you understood that the board was charged with maintaining an orderly liquid market --

THE COURT: Why don't you ask him the question? You are asking a question and then y u -- that's right, he is a party to this action, you can read his out of court deposition at any time. Why don't you ask him the question, if it is important to you. Let's get to his testimony here.

MR. BERNFELD: His testimony is here, your Honor. I'd like to know what his recollection is.

THE COURT: You haven't asked him a question yet, Mr. Bernfeld.

Q Mr. MacDonald, did you believe in 1963 that the Board was charged with maintaining an orderly liquid market?

A I think the rule states clearly that we were charged with maintaining an orderly market.

Q Do you recall testifying prior to this action that the Board had the responsibility to maintain a liquid market, a market which was fluid, where there were many buyers and where there were many sellers?

MR. O'DONNELL: I object, your Honor. What difference does it make whether it is an orderly market or orderly liquid market. I have no idea what we are talking about. The fact that he may have testified or used a word some years ago --

elrf 2 Ma nald-direct [1426]

THE COURT: All right. I agree with that, Mr. Bernfeld. Does it make any difference? Isn't it the orderly market that is the key issue, not whether it is liquid or solid; it is orderly, isn't it?

MR. BERNFELD: Liquidity in a marketplace, your Honor, is a factor in an orderly market. Whether there are many buyers or many sellers or whether the market has an undue concentration.

THE COURT: Yes, but you don't get to our understanding of it. Maybe that is your definition. If you want him to define what an orderly market is and you get that definition in, by all meanings. But you don't get it by calling something liquid, it is orderly, isn't it?

MR. BERNFELD: May I go on, your Honor?

THE COURT: Yes.

Q Mr. MacDonald, did you understand in 1963 that a market with an unjustified concentration could not truly reflect proper market conditions?

MR. O'DONNELL: Objection, your Honor.

THE COURT: The objection is sustained.

Q In 1963, Mr. MacDonald, isn't it true that the Produce Exchange had a variety of means to deal with the possibility of manipulation of prices?

elrf 5 MacDonald-direct [1429]

resulting in a disorderly market?

A Are you asking me did we have in 1963?

Q Let us begin, do you believe that you had a disorderly market in 1963?

A I do not.

Q Mr. MacDonald, with respect to the ability of the New York Produce Exchange to investigate market conditions isn't it a fact that the Cottonseed Produce Committee was a Committee that had the power to investigate market conditions in 1963?

A Not limited to.

Q Not limited to but including?

A It had the power to investigate, to look into, perhaps, is a better word than investigate.

Q What was the Cottonseed Products Committee?

A It was a Committee of the Exchange that frankly handled most of the daily work as to rules, recommendations, and recommendation to the Board of Managers. As an example, if a new warehouse were to be licensed it would normally be considered by that Committee prior to going to the Board of Managers, and then with a recommendation from the Committee. It would also consider rules changes and make a recommendation to the Board of Managers. It had no authority to

elrf 6 MacDonald-direct [1430]

do it on its own.

Q Mr. MacDonald, do you know who the chairman of the Cottonseed Products Committee was in 1963?

A I think it was Mr. Anderson. It is on the record.

Q Isn't it also true that the Board could ask in 1963, could ask the Business Conduct Committee to investigate market conditions?

A The Board of Managers would have the authority to ask any Committee in that end of it to look into something, or to do it themselves. Or to appoint a special committee to do it.

Q But isn't it true that the Business Conduct Committee had a special responsibility in the area of market conditions, keeping track of them, seeing that nothing was wrong with the marketplace?

A No.

Q It is not true.

Mr. MacDonald, can you tell me who the chairman of the Business Conduct Committee was in 1963?

A No, I could not. It may have been Mr. Anderson, I'm not sure. The Business Conduct Committee did not meet regularly.

Q Isn't it a fact, Mr. MacDonald, that the

elrf 7 MacDonald-direct [1431]

Business Conduct Committee never met during 1963?

A I believe that is so. It had no reason to meet. It is not an investigating committee.

Q So the Business Conduct Committee just sits back, is that correct, and waits for a complaint to be made to it?

A The Business Conduct Committee would be assigned some particular thing by the Board of Managers to look into. That is my recollection of the rules.

Q If the Produce Exchange suspected a manipulation in 1963, was it your understanding that some committee of the Exchange would have to become involved?

MR. LIMAN: Objection on the ground it is hypothetical. The witness has testified that he didn't consider the market disorderly.

THE COURT: Well, I think that the problem with these general questions, Mr. Bernfeld, is that you tie in 1963. You are asking him, I think, for information as to what the Board would do in the event that a certain situation emerged. I think you can ask him those general questions, but when you tie it to 1963 you imply, I gather, something that he has indicated was not correct. I think you can ask him the general question as to who would do what under certain conditions.

gr5 MacDonald-direct

that the powers of the board in connection with a suspected manipulation would include the power to impose position limits? Do you recall testifying --

A No, I donot recall that.

Q Isn't it true, Mr. MacDonald, thatthe board, infact, had the power to persuade or force a liquiation of a position where it suspected that there was a manipulation? Isn't that true, Mr. MacDonald?

A Mere suspicion?

Q After an investigation.

A You said suspected.

Q All right.

Let's say it's suspected and then they investigate and they found what they believe to be a manipulation, isn't it true that they had the power to persuade or to force a liquidation? Isn't that true?

A I believe that they could request a member to liquidate or partially liquidate his position, and in the absence of an action by him, he would be in defiance of the board and could be brought up on that.

elrf 5 MacDonald-direct [1454]

Q Do you recall testifying prior to the trial of this action that you had a discussion with the partner of the Bennett firm about not doing business with DeAngelis? Do you recall giving that testimony?

A We could have well have had a discussion. I wouldn't say it was necessary, even, but let the record say yes, we had a discussion.

Q But do you recall giving that testimony, that in fact you did have a discussion with the Bennett partners?

A I don't recall it, but I probably did. You are asking this here that happened quite a few years back and I'm not a child any more.

Q When you left the Bennett firm, Mr. MacDonald, this was back in the late '50s, is that correct?

A I didn't leave the Bennett firm. The Bennett firm merged with the duPont firm. We just carried over then.

Q You became part of the duPont firm, is that correct?

A That is correct.

Q And you were a partner of the duPont firm, is that correct?

A That is correct.

Q Isn't it true, and this is before 1963, that the duPont firm, of which you were a parnter, had a policy of not to do business with Anthony DeAngelis?

A You don't establish a policy until you face a fact. If we were asked to take business, I would say, and certainly it would be my opinion that we would look at it very closely.

Q Do you recall testifying prior to the trial of this action that when Bennett became part of duPont you knew that it was the policy of duPont not to do business with Anthony DeAngelis; do you recall giving that testimony?

A At the very moment of merger, I didn't know duPont's policies. If you want to say after that, after we had settled in, I would have made the policy.

Q You would have?

A Yes. Or instigated it, perhaps.

Q So that prior to 1963, isn't it a fact that the duPont firm, of which you were a partner, had a policy of not doing business with Anthony DeAngelis?

A Up until perhaps two years prior to this 1963 time that you are talking about, the DeAngelis name would have been just something in the past, and in current history would have been meaningless to us. There would

elrf 7 MacDonald-direct [1456]

have been no reason to write on a blackboard don't do business with him. We weren't asked, we didn't even think of the man.

Q Do you recall testifying prior to this action that there was, in fact, a policy at duPont not to do business with DeAngelis?

A I don't recall that, but it is possible I did.

Q Did you know that Mr. DeAngelis paid off his debts after the Gobel bankruptcy?

A Yes.

Q Do you recall whether that fact changed your mind about whether you would do business with Anthony DeAngelis?

MR. LIMAN: Objection on the ground of relevance.

THE COURT: I am having a little difficulty. You are talking about something that occurred -- was it in the 1950s?

MR. BERNFELD: No, your Honor. I'm talking about something that occurred prior to the time Mr. MacDonald joined Fahnestock in 1962. This would be a policy that would have been in existence at duPont up to the time Mr. MacDonald joined Fahnestock --

THE COURT: You asked him something about changing his mind after the Gobel bankruptcy. That is the question that was objected to.

When did that occur?

Q You also knew that Walter Klein was a member of the executive committee of the New York Produce Exchange?

A That's correct.

Q During 1963 did you know whether statistics on the size of the open interest were published every day?

A They were.

Q Did you believe prior to November 14, 1963 that there had been a sharp increase in the size ofthe open interest?

A Let me put it this way: I would say from the middle of September up to the date that you talk about there had been a very sharp increase. Prior to that I might have considered the increase normal, bearing in mind that the crop year is not a calendar year. The crop year for cotton would start on July 1st, and as the size of the supply increased, it is quite obvious, all other things being normal, that the open interest would also increase.

Q During this period from September 1963 on, did you believe that there was a sharp buildup in Allied's future position in cottonseed oil?

A I would have to presume that on the type of

activity.

Q Do you recall whether you, in fact, believed thatAllied had a sharp buildup in the size of its open position during that time?

A All I know is that the brokers who would normally act for Allied were extremely active.

Q Were you familiar during 1963 with the trading that took place on the floor of the New York Produce Exchange?

A All of 1963, in all of 1963?

Q Prior to November 20 of that year.

A From January 1st, let's say, to get the whole picture clear?

Q Yes.

A I was not on thefloor every day. In not only reading all the trade reports, trade papers, Journal of Commerce, Wall Street Journal, I would be aware of the volume and of the open interest.

Q Around when in 1963 did you find yourself going down on to the floor of the exchange?

A You can't pin a time on that. I might go down for some reason that made it necessary, I might go there if I was in the neighborhood and just dropped in, I might go there for any number of reasons.

That is strictly a guess.

Q Prior to September of 1963 you considered the size of the open interest less noticeable, is that right?

A I didn't say that.

Q How would you describe the open interest?

A I had prior to that -- we had been looking at it as part of our duties. Perhaps certain ex-pits might have gotten your curiosity; you might want to know a little more about it.

Q Was the volume of trading discussed on the floor of the exchange when you were down there?

A Everything would be discussed that had anything to do with business. The weather, exports -- you can't pick one thing out and say, was this the only thing you discussed, or was this the major thing. No. You discussed the market and market conditions.

Q Did you know, Mr. MacDonald, who were the floor brokers on the New York Produce Exchange in 1963 who were generally associated with Allied Crude?

A In 1963, I believe they used two comparatively young men who were the floor brokers and presumed to be acting for Allied.

Q Who were they?

A Well, it was a James Comenzo, and a person named Fontana.

Q Why was it that you presumed that these two floor brokers were associated with Allied?

A They talked too much.

Q So it really wasn't any secret, was it?

A Not if they were telling the truth, no.

Q Did you believe them?

A I had no reason not to.

Q Were these two brokers, Mr. Comenzo and Mr. Fontana, pretty active in the cottonseed oil market?

A Yes. I think I mentioned that before.

Q Were they active on the buy side?

A Yes, they may have been active on both sides, but I would say to a much greater extent on the buy side. Bear in mind that they would be active on the sell side too, as positions were liquidated, and they may have had other customers, I don't know.

Q But from your conversations with Mr. Fontana and Mr. Comenzo you presumed --

A Now, wait a minute. I didn't say I had conversations with them.

Q From whom did you hear that Mr. Comenzo and Mr. Fontana were floor brokers from Allied?

A From whom did I hear it?

Q Yes.

A You could hear them on the floor without talking to them; but I could have heard it from 25 to 30 different people.

Q It was pretty common knowledge, wasn't it, that Mr. Comenzo and Mr. Fontana were floor brokers?

A Yes, that is why I don't know why you keep drilling away at this. If it was common knowledge, I knew it.

Q Most of the floor traders certainly knew that Mr. Comenzo and Mr. Fontana were trading or Allied, is thatright?

A That's correct. You would have to presume Allied or Allied group merely on the rumors of the size in the cash markets. These floor brokers would give up the name of the clearing number. They would not give up the name of Allied.

Q Give up to whom?

A At this time it would be in the majority Ira Haupt, I believe. There may have been others, I don't know that.

Q Were these contracts given up directly to a man called Ira Haupt?

elrf 5 MacDonald-direct [1479]

Allied anticipated Russia buying United States vegetable oil?

A That Allied had --

Q Anticipated this?

A That they had?

Q Yes.

A I would presume that Allied, along with many other people, would have anticipated a much higher volume of export business, and that Russia was let's say number one in the talk. Again, I wouldn't say how far ahead of number two in the talk.

Q Mr. MacDonald, perhaps you can correct me, I didn't recall asking you whether people were expecting an increased volume of exports. Did you have a feeling that there was going to be an increased volume of exports?

A Yes, and I'm not going to tak hours to tell you why.

Q I didn't ask you that, sir. Did you presume during the month of July and August, 1963, that Allied's long position was a hedge against cash sales?

A I would presume that Allied's long position was a hedge against cash sales, historical past record and their assumption of additional business. He was a very aggressive person in the export field.

Q Did Mr. Berg report to the Board of Managers?

A Regularly Mr. Berg attended all Board of Managers meetings.

Q And similarly was Mr. Berg supervised by the Board of Managers?

A Was he?

Q Yes, was he.

A Yes. The Board of Managers ran the Exchange. Mr. Berg did the physical running of it under the direction of the Board of Managers.

Q And as part of his job did Mr. Berg report to the officers and to the Executive Committee of the Produce Exchange?

A He reported to the Board of Managers and to the officers, yes.

Q That would include the Executive Committee which was part of the Board, isn't that true?

A That is true.

Q Was Mr. Berg, in connection with his actions during 1963, at all times under the supervision of the Board and the Executive Committee and the officers of the Exchange?

A That is correct.

Q Was Mr. Berg charged with the responsibility of implementing the Board's policies and their directions?

A That was his position.

Q Was it also part of his position that he was to take and follow up on orders which you gave to him as president?

A What?

Q Was he supposed to follow up on directions that you gave him as president?

A He certainly did. That is number one.

If he had some reason not to do so, then it would become a Board matter. The president is not a dictator, stands alone and runs it all by himself.

Q It was the Board of Managers that was primarily responsible; is that correct?

A Ultimately.

Q And the Board met periodically during 1963; is that right?

A Yes. The rules required meetings, regular meetings once a month. Generally it was not done in one of the summer months. It would be an inability to get a quorum.

Q During the period of time when the Board of Managers wasn't in session, once a month or whenever it was that they were able to get a quorum, was Mr. Berg responsible to report to the Executive Committee

of the Board with respect to any developments in the market?

MR. LIMAN: Objection to the form of that question. No objection to whether he reported to the Executive Committee.

THE COURT: Read the question back.

(Question read.)

THE COURT: The objection is overruled.

You can answer the question.

A I have to clarify something here. It was not my policy nor the policy of my predecessor to hold Executive Committee meetings prior to a regular Board meeting because we both felt that the entire Board of Managers ran the Exchange and we did not feel it a healthy situation either for the past or the future that perhaps five men should hand an accomplished fact to the rest of the Board and ask for an okay. I preferred an open discussion on the Board.

And that the Executive Committee did not meet during this period of time. They were available with the exception of that one day. So I think we can just sort of put those out of our thinking.

Q Let's not put them out of our thinking quite so quickly, Mr. MacDonald.

in the fall or in the harvest period of the year, generally?

A I would say it did, but not in a straight line. In other words, it may have done this rather than this (indicating).

Q But a downward direction; is that correct?

A What?

Q A downward direction?

A As I recall it.

Q Normally?

A Normally it would be, yes.

Q In fact, Mr. MacDonald, weren't the odds considerably against the futures market going up during the light of the harvest period?

A What would cause it?

Q Wasn't it true, Mr. MacDonald, that one would generally expect that prices would not go up during the height of the harvest; isn't that right?

A That would be the normal presumption, but in the bueinsss you live with this every day and once a month you would get government report, U. S. Department of Agriculture report on crops. If that turns out to be considerably different than all the private guesses, that could arrest or accelerate the trend.

Am I making myself clear to you?

time ago, that he kept up with the volume of trading.

MR. BERNFELD: I'm sorry, your Honor.

Q Didyou know in 1963, prior to November 14, that the volume of trading in cottonseed oil futures was at a record level?

A At a record level?

Q Yes.

A What time is this?

Q Before November 14, 1963.

A In total?

Q On a month by month basis.

A If you took it in total, I knew it was a record volume. I wouldn't want to say day by day or month by month.

Q But it was a pretty heavy year, wasn't it?

A In almost all commodities, not limiting it to cottonseed. If you have done any studying on this, you will find out there was a very sharp pickup in trading interest in commodities.

Q But in cottonseed oil in particular, there was a heavy volume compared to the prior year?

A You can't just limit it to one thing and try to hide the other. It was a general increase in

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interest in all types of commodity trading.

Q I am merely asking whether you knew whether in '63 the volume of trading in cottonseed oil was substantially heavier than it was in 1962.

THE COURT: I think he's answered the question. He's told you that theanswer was yes, it was that way with all commodities trading.

Q Wasn't it also true that during 1963 the number of cottonseed oil contracts traded month after month was high?

A Yes.

Q Didn't you know that it was unusual for a futures market to experience a sustained period of heavy volume into the summer of the year?

A No. You said unusual?

Q Yes.

A No, it was not unusual.

Q Did it happen frequently?

A Depending on factors, I would say that it happened often.

Q Your experience on the cottonseed oil futures market, did it happen frequently during the summer of the year that volume was high?

A It would at any time there wasan unexpected

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going over that again?

MR. BERNFELD: No, your Honor.

THE COURT: I don't understand, then, what the relevance, and I don't understand what the relevance of where the CEA got their figures from. He's told you he was aware of something by general discussion.

Q Mr. MacDonald, did you know that the open interest in cottonseed oil futures was larger in 1963 than it had been in 1962?

MR. O'DONNELL: Your Honor, we have had that precise question --

MR. BERNFELD: We had that with volume, your Honor.

MR. O'DONNEL: That precise question has been asked and answered.

THE COURT: I don't remember. I thought it had been, but I really can't be sure at this point, so you may answer it, Mr. MacDonald.

A I think it was larger than in '62.

Q In fact, didn't the size of the open interest in cottonseed oil futures increase markedly during the months of July and August of 1963?

A I don't recall. I think there was an increase. I don't recall markedly, but perhaps it

did.

Q Did you understand that the open interest during the months of July and August as growing primarily as the result of ex-pit transactions?

A I would say July, August, September and October. Don't pin my memory to the two months.

Q Fine. July and August and September and October?

A I would say during that period of time, yes, there was a heavy ex-pit trade.

Q When you went down on to the trading floor was the increase in open interest a subject of discussion?

THE COURT: I am sure we went into that.

A Among other things,yes. You'd be very happy with any increase. It showed more income.

Q This talk on the trading floor concerning the increase in open interest, did it focus upon the unusual number of ex-pit transactions?

A It did not focus on it. That was a definite part of the discussion, yes.

Q What was thenature of the discussion with respect to the ex-pit transactions that you heard on the floor of the exchange?

A What was the --

Q What was it about?

A The discussions?

Q Yes.

A I would say somebody would look at the ex-pit and say I wonder who did it, I wonder what's going on, or --

Q Was it pretty much clear that Mr. DeAngelis was responsible for these ex-pit transactions?

A Bear in mind that there is a buyer for every seller, I would say he was one half. In other words, there had to be somebody meeting him in it, didn't there?

Q There had to be something on the other side of the ex-pit trading?

A That is right.

Q But on one side of the trade, it was pretty clear that Mr. DeAngelis and his company, Allied, was one side of the trade?

A Yes, but I didn't know which side.

Q One side or the other?

A Yes.

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Q With respect to most of the ex-pits trades in 1963 it was your understanding at the time that either Mr. DeAngelis or Allied was on one side of the other of the ex-pit trade, is that right?

A It was my presumption that any increase in the ex-pits over what had been normal over past years would have been in some way connected with him, yes.

Q When you were on the floor of the Exchange isn't it true that it was pretty much common knowledge that Mr. DeAngelis was participating in these ex-pit trades in a large way.

MR. LIMAN: Objection, your Honor.

THE COURT: He has just answered the question.

MR. BERNFELD: He answered with respect to his own knowledge, your Honor.

THE COURT: The objection is sustained.

Q During 1963, Mr. MacDonald, did you keep yourself advised as to the price of cash cottonseed oil?

A Did I what?

Q Did you follow cash cottonseed oil prices?

A Yes. They were generally published in the trade sheets. Let's say an informed guess.

Q What trade sheets did you read during 1963?

A Well, you would have newspapers too, published.

Q And you knew in the futures market what the size of the open interest was on the long side, isn't that right?

A The size of the open interest was how many longs and shorts there were in the market with an open position.

Q On the long side of the market I believe you indicated that Mr. DeAngelis was the major long, is that right?

A He was the major long.

Q And didn't you have a feeling about the size of his position in relation to the long side of the market?

A At what time?

Q Let's say the beginning of July and onwards to November of 1963?

A I had an opinion and as it turned out to be, somewhat wrong, that he probably had 50 per cent, maybe 40 to 50 per cent of the long side.

Q When did you hold that opinion?

A I couldn't pin it down to time. It might have been for a matter of months, it might have been from March, April on, I couldn't say.

Q Isn't it true, Mr. MacDonald, that business

was booming on the New York Produce Exchange in 1963?

A I didn't hear one word.

Q Booming, huge, very, very big.

THE COURT: I think we established that this morning. I don't know whether the word was booming but it was going fairly well.

Q In 1963, Mr. MacDonald, were you concerned to know whether the long open interest had become concentrated in the hands of a few people?

A I would be interested in knowing whether any side of the open interest was concentrated.

Q Had you noticed that in the summer or the fall of 1963, that traders in the long side of the market had an increasingly large percentage of the open interest on the long side?

A I presumed or I knew that large traders had an increasingly heavy percentage as against small traders.

Q Did there come a point in 1963 where you became concerned when the percentage of the long side of the market in the hands of large traders increased?

A My concern increased.

Q At what point was that?

MR. O'DONNELL: The witness, your Honor, didn't

understand the question because he said, "my concern." That wasn't the question. Is it possible to get that microphone back in operation?

MR. BERNFELD: We had tried during lunch and apparently there was difficulty with it.

MR. O'DONNELL: The witness didn't understand the last question, your Honor.

THE COURT: Read it back.

(Question read.)

THE WITNESS: The word I didn't get was "concerned." I was interested most times in trading. My concern or interest would have increased sometime, I would say, in late June in that period.

Q And what would have increased your concern in late June?

A It would be the type of trading; when you are in business a long time you sort of have a feel for it. I would know what that feel is and you want to find out. I just -- it didn't feel right to me. That is the only way I can put it to you.

Q Were there any particular aspects of trading that gave you this feeling of uneasiness?

A No. I said I couldn't pin it.

Q Was there any particular point, any particular

percentage point in terms of the concentration of the open interest in the hands of large traders when you would think that it was time to do something about it?

A I think, you have the testimony, you will find out in July we tried to get information from the Commodity Exchange Society, to see if everything was quite all right.

Q How did you go about trying to get this information?

A I instructed Mr. Berg, who is the paid employee and it is part of his duty to call Mr. Caldwell in the Commodity Exchange Authority in Washington and try to find out -- to find out if they would give us the names of the actual holders of the futures positions. All we would have had was the name of the clearing member. Not of the customer.

Q How would you have gotten the name of the clearing member?

A Well, the important thing was to get the ultimate customer first. At that time, who carried the contracts was not material. Whatwas material was to see if there were a concentrated interest and to follow up on that.

Now, let me explain why it wouldn't be too

important. At that time, to get the name of the clearing member, a party could have, let's say for the sake of argument, 1,000 contracts spread through ten houes. If you went to John Doe & Company, John Doe would only have 100 contracts. So, that wasn't too important. What was important, was who controlled, if anybody did.

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Q What happened when Mr. Berg called Mr. Caldwell? Did you receive a report on that?

A They told us in the absence of a compelling reason, they were legally bound not to give us those figures, that those figures were confidential.

Q Did you tell them you were concerned with the condition of the cottonseed oil market?

A What?

Q Do you know whether the exchange communicated their concern to Mr. Caldwell of the condition of the market?

A I'm reasonably sure, although Mr. Berg made the call, that there would not have been a call if there wasn't concern.

Q Did you direct Mr. Berg to make that call?

A Yes.

Q And did he report back to you on it?

A Did he what?

Q Did he report back to you on it?

A Yes.

Q So this is how --

A That's how I knew they wouldn't give it to us.

Q Who was Mr. Caldwell?

A Mr. Caldwell was at that time the man in charge, the director of this division; he was in charge of the Commodity Exchange Authority.

Q Did you ever instruct Mr.Berg to go back and tell Mr. Caldwell that it was very important to the exchange to get this information?

A No, because if you read the rules and regulations of the Commodity Exchange Authority, they are supposed to communicate with an exchange or advise an exchange of anything that happened. In the absence of an overwhelming reason that they gave us an excuse, we would have to assume that everything was quite all right.

Q Were you familiar in 1963, with the regulations under the Commodities Exchange Act?

A Of that particular one?

Q With respect to --

A I was familiar iwth the Commodity Exchange Act. Anybody that is in the commodity business is expected to be.

Q Were you familiar with the regulation that pertained to the exchange -- excuse me -- to the Commodity Exchange Authority policy on confidentiality of

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Q Mr. MacDonald, when Mr. Berg was rebuffed by Mr. Caldwell, couldn't you in fact have instructed Mr. Berg to go to the clearing association to ask them?

THE COURT: Don't ask him couldn't he, because we don't know whether he did. Ask him did he.

Q Did you, Mr. MacDonald, instruct Mr. Berg to go to he clearing house to determine what the position of the exchange members was since you couldn't get it from the CEA at that time?

A We went to the Commodity Exchante Authority to get the name of the customer. I tried to explain to you before that the clearing house did not have the name of a customer. We didn't have to go to the clearing house.

We could have, and I believe certainly would have gotten the information. We subsequently went to Ira Haupt & Company to see if they knew their customer, if they knew what they were doing. "Knew their customer" covers a lot of ground. You might say that a brokerage firm is an arm of an exchange in that respect. They are to satisfy themselves fully as to their knowledge of the customer, the safety of the account -- this is not limited to cottonseed oil,

this is on the stock exchange too.

Q Do you know what caused Mr. Berg to go to Ira Haupt in 1963?

A Instructed them to.

Q When did you give him that instruction?

A Don't pin me on days. As I said, this is 12 long years.

Q Do you know approximately when you gave him that instruction?

A We from time to time kept looking and watching. When I say we, I don't limit it to the two of us who did most of the work on it. We asked the people at Ira Haupt these questions that I just told you, that they were to assure themselves, and be in a position, therefore, to assure us that everything is quite correct. We went well beyond that.

Q Do you recall whether this was done in the first half of the year?

A No, it was not done in the first half of the year. I don't even recall that Ira Haupt had the account in the first half of the year.

Q Did it happen in the month of July after you tried to get the information from the CEA?

A Again, I am assuming say July, August,

somewhere in there.

Q What led you to instruct Mr. Berg to Ira Haupt?

A The suspicion that they had, a major account and could this account justify its position.

Q You could have found out for sure who was the exchange member holding the long side of the market by going to the clearing house, couldn't you?

A We could find out who held sizable positions.

Q If you found out who held sizable positions, couldn't you go to each of those brokers and ask them, who are your customers?

A In the first place, as I said, we bypassed the clearing house and went to Haupt. If Haupt said they did not have it, we'd have to go further. We did many more things.

Q Do you recall prior to the trial testifying that when more than 80 per cent of either side of the market comes into the hands of those group of people called large traders, that to you represents a reason for concern?

MR. O'DONNELL: Objection, your Honor. There has been no foundation here with respect to what Mr. MacDonald's views are about 80 per cent.

Q I would also like to show you, Mr. MacDonald, Plaintiff's Exhibit 10-G for identification. Do you recognize this document?

A I recognize that publication, yes.

Q Would you tell us whether you received this publication during 1963?

A In other words,was I on the mailing list?

Q Yes.

A Yes, I was on the mailing list.

Q Is this publication a monthly publication of the Commodity Exchange Authority?

A Yes.

Q Does it reflect the commitments of traders in cottonseed oil futures on a monthly basis?

MR. LIMAN: Your Honor, I hesitate to object, but it seems to me that this is so repetitious that it ought to be stopped.

THE COURT: Let's have a side bar conference.

(At the side bar.)

THE COURT: I understand you have asked questions and you were attempting to establish several points. He has already told you that he was aware of it. Now you are going to ask him, what is all of this about.

MR. BERNFELD: The point of this, your Honor,

Q Would you take a look at the last page of Exhibit 10-G for identification.

Do you recall receiving this publication containing that information, in 1963?

A I have to presume I would have received 25 or 50 or more Government publications a month.

Q All having to do with cottonseed oil?

A Oh, no. This is not only having to do with cottonseed oil of itself.

Q Right. How many commodities were actively traded on the New York Exchange in 1963?

A Just one.

Q That commodity was cottonseed oil, is that correct?

A That's right.

Q Did you follow the commitments of traders reports issued by the Government on cottonseed oil?

A Yes. I think I ought to, since I am talking for the record, point out the percentage held by large traders, anybody who has 25 contracts or more, anybody. That doesn't mean 86.8 by this publication is held by one party.

Q I don't believe I said that, Mr. MacDonald.

A No, but I didn't think you understood that.

Q Were you concerned in 1963 when the concentration of contracts held by the large traders on the long side of the market came to exceed 80 per cent?

A No, I was not concerned.

Q Do you recall testifying prior to the trial of this action that when concentration in the hands of large traders exceeded 80 per cent, that would be basis for concern to you?

A I don't recall saying concern at all. And I might point out to you that on this very same date that you are quoting me, 86.9 of the short side was held by large traders.

Q Let's turn back to Plaintiff's Exhibit 124 for identification; which is a summary of these monthly publications. Do you see, back at the beginning of the year?

A Yes.

Q Where 52.3 per cent of the contracts on the long side of the market were held by large traders?

A Yes.

Q Was that a basis for concern to you in 1963?

A No.

Q And do you see where right during the first month, 86.9 per cent on the short side of the market were

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Q Take a look at the end of June; we see that the percentage held by large traders on the long side of the market was 68.3.

A That is correct.

Q Very close to 70 per cent, is that right?

A That is correct.

Q And at the end of July it increased to 86.8 per cent?

A That is correct.

Q Pretty substantial jump, isn't it, Mr. MacDonald?

A Yes. Isn't that the time I stated we looked at it?

Q Did you contact Ira Haupt following the month of June, 1963?

A Did we do what?

Q Did you contact Ira Haupt after the month of June, 1963?

A I believe so, yes.

Q When was the first time you contacted Ira Haupt?

A Didn't I say a little while ago I thought July?

Q And who was the one from the Exchange contacted?

A Mr. Berg did.

Q What information was reported to you --

A What is that?

Q What information was reported to you concerning this contact which you believe took place during the month of July between Mr. Berg and Ira Haupt & Co.?

A What was the result of the conversation?

Q What was reported to you?

A What?

Q What did Mr. Berg report to you?

A Mr. Berg said they were experienced in commodities, they knew what they were doing, they had ample protection and were doing more than the rules required in that they were getting more monies, more margin -- they were getting margins where the rules didn't require it and that they also had additional collaterals.

Q Do you recall whether it was reported to you, whether Ira Haupt was getting additional money on these contracts?

A I said it was reported to me that they were receiving more than was required under the rules, $400 per contract above what you normally get from a hedge account.

Q Was it reported to you to whom Mr. Berg spoke to at Ira Haupt & Co.?

MR. MINNEROP: Could we ask Mr. Bernfeld to speak to the witness directly and not the other way because Mr. MacDonald seems to have trouble understanding him when he turns his back to him.

Q Can you hear me now, Mr. MacDonald?

A Yes. I don't know. I would presume that it would be the managing partner because that would be the normal thing to do that.

Q So it would be the normal thing to talk to the partner who was in charge of commodities at the firm, isn't that correct?

A I didn't know they had a partner in charge of commodities. Did they?

Q You presumed you talked to the managing partner?

A I said I presumed he talked to the managing partner.

Q The managing partner of the entire firm?

A That is correct.

Q I stand corrected, Mr. MacDonald. The managing partner of the entire firm. Did Mr. Berg tell you that he spoke to the managing partner of the entire

firm?

A I don't know whether he said managing partner, whether he said partner or partners, but Mr. Berg I am very sure went to the top, and it was not a matter of talking to some clerk.

Q Right to the top, to the parties?

A That is correct.

Q No question in your mind about that, is there?

A None whatever.

Q Do you remember the substance, did Mr. Berg report to you the substance of these conversations with these people at the top of Ira Haupt & Co.?

MR. O'DONNELL: I think we have already had the answer to that, your Honor. Objection.

Q Was the conversation that you referred to earlier with the people at the top of Ira Haupt & Co., the conversation that Mr. Berg had with them? Did he report to you that was the conversation he had with the people at the top?

A I thought I said that.

Q Very good, I'm sorry.

A I might also add that we got confirmation of that.

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Q How do you mean, Mr. MacDonald?

A We requested Mr. DeAngelis to come into the Exchange.

Q Why did you --

A Because he wasn't a member.

Q Of what concern was it that Mr. DeAngelis come into the Exchange?

A To confirm what Ira Haupt & Co. told us, both as to the monies they were receiving, the assurances that all the trades were legitimate, and that there was adequate protection there.

Q Was it reported to you that Ira Haupt told Mr. Berg that DeAngelis was their customer?

A Let's group them all and call them DeAngelis.

Q DeAngelis, Allied or the related companies?

A Yes.

Q So in connection with this inquiry, the Exchange found out the name of the customer of Ira Haupt as well as information relating to amounts of margin being received by Ira Haupt, am I correct?

A That is correct.

Q What other information was received?

A What?

Q What other information was received, to your

knowledge?

A We had a member of our Exchange, who is very close to the people in Ira Haupt, and I would more or less say on his own volition, but after talking to me, he went up there to speak with them, just to assure himself, since many of them are dear friends, that they knew what they were doing and they weren't going to get into any trouble.

Q And who was that, Mr. MacDonald?

A A gentleman by the name of Goldfogle.

Q Isn't it true that Mr. Goldfogle was one of the independent floor brokers on the Exchange?

A He was.

Q He voluntarily came to you and said he was going to speak to Ira Haupt?

A Yes. I used to speak to him off and on any time I was down the floor and of course I knew very well his connection with them was extremely close.

Q What was his connection with Ira Haupt?

A Close enough that he had been invited into the partnership.

Q Do you know that of your personal knowledge?

THE COURT: Mr. MacDonald, you have to keep your voice up.

Q Do you know this of your personal knowledge or is this something you heard?

A Do I know what?

Q Do you know of your personal knowledge the statement you just made?

A Yes.

Q How did you know that?

A Mr. Goldfogle told me.

Q Did you indicate earlier that DeAngelis had two principal floor brokers?

A Yes.

Q Mr. Goldfogle wasn't one of those two principal --

A Mr. Goldfogle was not a DeAngelis floor broker.

Q Nobody identified Mr. Goldfogle with DeAngelis, did they?

A In no way whatever.

Q They did identify Mr. Fontana and Mr. Comenzo with DeAngelis?

A That is correct.

Q And Mr. Goldfogle didn't receive orders to your knowledge from Mr. DeAngelis directly, did he?

A None at all.

Q Could you explain your reference to ex-pit transactions? I'm not sure I fully understood what you were saying.

A You mean what an ex-pit is, or these transactions?

Q The transactions to which you were just referring relating to Mr. Peters.

A I again had assumed that some of these ex-pits were basically a financing operation for Allied, whereby Peters would carry the near term contracts or deliveries and would hedge them further out, perhaps with a prearranged agreement.

Q I believe earlier you indicated that there was an increased number of type 6B ex-pit transactions during 1963, is that correct?

MR. O'DONNELL: I object. We have been over this, your Honor. As to the volume of 6B ex-pits we have that testimony.

THE COURT: I thought we had that.

MR. BERNFELD: It was just preliminary to my next question, your Honor.

THE COURT: All right.

Q I call your attention to Plaintiff's Exhibit 126 in evidence, which contains on it monthly volume of

A We knew who the bank was.

Q The New York Produce Exchange would know who was holding those documents known as registered warehouse receipts?

A Who the holder was, not the owner.

Q But there would be no question you'd know who was holding the documents, who you had to return it to?

A Who had the paper.

Q Isn't it true that one of the reasons you recalled in these warehouse recipets for revalidation was because of the increased number of deliveries on the exchange in 1963?

A No, there was no connection. Not to my knowledge.

Q Is it not true that deliveries were higher on the New York Produce Exchange in 1963 than they had been in previous years?

A Of registered warehouse receipts?

Q Deliveries on the exchange generally.

A I guess they were higher.

Q Was there anything other than a registered warehouse receipt that could be delivered to the exchange?

A No.

Q So if deliveries were higher, the number of registered warehouse receipts tendered on the exchange in satisfaction of a contract would be higher, isn't that true?

A That would be a reasonable assumption.

Q Isn't it a fact, Mr. MacDonald, that in 1963 the number of registered warehouse receipts that were being passed back and forth prior to the revalidation were moving like pingpong balls, they were being shuffled all over the place?

MR. O'DONNELL: Objectionto the form, your Honor.

THE COURT: Objection sustained.

Q Didn't you know, Mr. MacDonald, that there was a lot of movement of registered warehouse receipts in 1963, prior to the revalidation in 1963?

A No, I knew there was a sharp increase in capacity.

Q Didn't you also know that there was a sharp increase in the number of deliveries?

A Yes. Well, that would go together.

Q I see.

A You know, it's a short that delivers.

I hope you know that.

Q Right.

Now, Mr. MacDonald, are you aware that on the fist notice day of the delivery month, that as of the first notice day of the delivery month in 1963, the number of contracts settled by delivery to the exchange was substantilaly higher than they had been in 1962?

A I think it was, going on memory.

Q Do you recall in fact that the number of contractswere twice as high as of the first notice day, these being settled by delivery, as compared to '62?

A Yes, but I just don't see what difference it makes.

Q Let's move on. Once a warehouse receipt is registered by the New York Produce Exchange, does it have to be registered in order to be delivered, let's say a second time by somebody elsee?

A No.

Q So if I accept a warehouse receipt in delivery, in satisfaction of a long kind, I could then take that very same warehouse receipt and tender it in satisfaction of somebody else's long contract at some later point in time, isn't that right?

broker for cottonseed oil futures contracts sometime in July or August of 1963?

A In clearing futures contracts?

Q Cottonseed oil futures contracts.

A In clearing cottonseed oil futures contracts --

Q Wasn't it around July or August that you first heard --

A If memory serves me right, Ira Haupt & Co. was a member of the clearing house for years.

Q But in terms of taking any active role, you never heard of Ira Haupt taking any active role prior to July of 1963, did you, Mr. MacDonald?

A I just said to you I didn't.

Q Thank you, sir. When all these 6-B ex-pit transactions were going on in 1963, what type of information did you seek concerning them?

A Didn't I just say that a little while ago?

Q Did you personally seek the information you described a few minutes ago, or was that information sought by the secretary?

A By the secretary.

Q But that was at your direction?

A It is the same.

Q I'm sorry. Thank you.

Q Do you know, Mr. MacDonald, whether there came a time that someone from the New York Produce Exchange contacted Anthony DeAngelis or his company, Allied Crude, in 1963?

A It would have been around that time. After the visit of Ira Haupt.

THE COURT: I thought we had that.

MR. O'DONNELL: Yes, we did,your Honor.

THE COURT: I thought Mr. MacDonald said he called DeAngelis in.

MR. LIMAN: I think he has the wrong page of his outline.

Q Do you recall, Mr. MacDonald whether Mr. Berg told you whether he had obtained any proof frmo Mr. DeAngelis concerning the need of Allied for its long position in the cottonseed oil futures contracts?

A The time?

Q The need of --

A Yes, I recall. We had that before. He came in and justified his position.

Q And how did he justify his position?

A He had records to show forward sales, anticipatory sales on what had happened in the past.

Q Did you see these records?

hpr MacDonald-direct [1582]

A I didn't do this.

Q Do you know to what these anticipatory sales referred?

A Business that he may have done inthe past and had every reason to expect to do in the future.

Q But it had nothing to do with it, Mr. MacDonald, with any new type of business thathad neever been done before?

A Did he give us proof that he had additional business?

Q The proof that he showed you, did it have anything to do, the anticipated sale, did it have anything to do with the new type of business that Allied never had received previously?

A Did he say I never got business from X but I'm going to get some or Imight get some? No, not to my knowledge.

Q Are you familiar, Mr. MacDonald, with the rumors of an impending Russian oil deal in 1963?

A There was.

Q Did any of Mr. DeAngelis' proof of his long position have anything to do with these rumors of a Russian oil deal?

MR. O'DONNELL: Your Honor, I object to

that. He has just previously testified, except he didn't use the word "Russian," that he didn't have anything to do with it.

Q Do you know whether Mr. Berg saw all of DeAngelis' records with respect to forward sales contracts in 1963, when you talked to him?

A He saw adequate records.

Q What does "adequate" mean to you, sir?

A It's a pretty common word. Adequate means satisfactory and sufficient. In other words, to satisfy Mr. Berg that the position was justified.

Q Is "adequate" enough to show that he was hedged to the extent that he claimed to be?

A That he had purchases on the cottonseed oil futures market, and had every reason to expect to be able to consume those in one way or another.

THE COURT: Is Mr. Berg still alive?

MR. BERNFELD: No, your Honor.

MR. O'DONNELL: Your Honor, his deposition of course is available.

THE COURT: I understand that.

MR. BERNFELD: Your Honor, I'm trying to reduce the deposition testimony to whatever extent

Q Did you take his word for it?

A Well, maybe I better say it was generally not in the trade.

Q What about yourself? Did you think it was accurate?

A I thought it was reasonably accurate, yes, in view of the facilities he had and the export business that he had.

Q Did you want Mr. DeAngelis to reduce his position in cottonseed oil futures contracts at that time?

A He offered to or asked us if we thought he should and I said yes, he should, but he didn't.

Q Did there come a time when anyone from the produce exchange had another conversation with Mr. DeAngelis concerning his position in the cottonseed oil futures?

A I'm not sure of that.

Q I would like to read you a few lines from your 1968 testimony in this action, page 117, going on to 118:

"Q Did you in 1963, following Mr. Berg's meeting with Mr. DeAngelis, know whether or not Mr. DeAngelis reduced his position as he had promised to?

elr MacDonald-direct 1589

Q Do you recall that?

A What?

Q Do you recall a subsequent conversation?

A I recall that.

Q What do you recall about that?

A I recall that we called and asked him why he didn't reduce his position. I do not recall his answer. I do recall a call.

Q Do you know whether there was any further contact between the New York Produce Exchange and Mr. DeAngelis subsequent to this conversation relating to a reduction in Mr. DeAngelis' position?

A I don't know ofany further on it, no.

Q Did Mr. Berg report to you any conversation between Mr. DeAngelis and him concerning Mr. DeAngelis' reason for having the long position on the cottonseed oil futures market?

A His reason for having?

Q His readon.

THE COURT: Haven't we gone over this?

Q You told us in fact what Mr. Berg did. I want to know whether he reported any conversations to you in which Mr. DeAngelis described --

A The result of the meeting?

elr MacDonald-direct [1597]

Q Do you recall whether it was unofficially discussed after a meeting?

A I think I better explain. After a meeting was over, some people would have to hurry back to their office, some of us sat around and discussed. That would be particularly those in the oil trades who had an interest in it, andnot from my other trades. We might discuss happenings as individuals.

Q When you left the meeting on September 23, 1963, did you think that a scale up margin was going to be imposed?

A Was going to be what?

Q Imposed, put i-to effect by the clearing association.

A I was given the impression that they were going to do something like that.

Q Wasn't it your impression that they were going to put it into effect normally in the matter of course of three or four days?

A I thought so.

Q As it turned out, they didn't, is that correct?

A That's right.

Q As it turned out, a scale up margin didn't

go into effect until November 15, is that correct?

A That's correct.

Q Did you receive notice of the imposition of scale up margin from the clearing association after the meeting?

A I did.

Q Do you recall when you received that notice?

A It would have been I assume a day or two after, by mail. I would have received that not as the president. In other words, as part of the trade.

Q Isn't it a fact, Mr. MacDonald, that you were surprised that the scale up margin did not go into effect until November 15, 1963?

A Very definitely so. Let me explain that a little.

A No.

Q Do you know whether anyone else was present when Mr. Berg made this phone call?

A I don't know.

Q Do you know whether a report of who held positions 100 contract or more was in fact received from the Commodity Exchange Authority?

A As I recall it, there was a form on legal paper that may have been delivered by hand from their New York office on instructions from Chicago, but I am not sure of that.

MR. O'DONNELL: I think the witness mis-spoke, your Honor. I think he said from Chicago and what he meant was from Washington.

THE COURT: Did you hear that?

THE WITNESS: No.

THE COURT: You said from Chicago.

THE WITNESS: I should have said from New York. In other words, Washington would instruct New York regional office to give us the paper or they may have mailed it direct.

Q And do you know to whom this report went at the New York Produce Exchange?

A Mr. Berg.

Q Did you ever see the report sent to Mr. Berg by the Commodity Exchange Authority?

A Sometime after the -- whenever the end came.

Q So you would recognize it if you saw it?

A Yes, I believe so

Q I would like to show you Plaintiff's Exhibit 1 for identification.

Do you recognize that document?

A Yes.

Q Would you tell us what it is?

A Yes, total position of all parties holding either long or short positions in cottonseed oil of over, I think it's over a hundred lots.

Q Excuse me, I don't believe I heard your last statement, sir.

A It may not be over a hundred, but I think in total it's over a hundred altogether.

Q Is that both on the long and on the short side of the market?

A No, I don't think so. I think that would be the total long in each month, the total, if they totalled over 100, we would receive that, and probably we would then receive their short position with it too,

in order you could get to a net position.

In other words, if we were over 100 on one side and 40 on the other side, my net would be 60.

Q Does the document you have in front of you show people who are net short as well as net long?

A I really wish I had an original to make this out. Some of it is a little gobbled. Over 100 who are net long and net short.

Q Does that document show the position of people who are net short, 100 contracts, as well as people who are net long?

A Yes.

Q Do you recognize that as the document which Mr. Berg received from the Commodity Exchange Authority?

A I believe it is that document.

Q And this is the document you saw sometime after November 20?

A Yes, sir.

Q But it is the document Mr. Berg received when?

A I don't recall the exact date. I told him to lock it up until we could go to work on it and then this happened.

Q Do you recall whether that was November 14 by looking at the calendar?

A This would have been received onthe 14th, at least according to the notation on the top of it.

Q Can you tell us as of what date that report specifies? In other words, as of what date does it give the position of those people who were net long and net short 100 contracts?

A Oh, I seewhat you mean.

I would presume this was as of the 12th of November, according to this notation. This is not my memory. It's the notation.

Q I call your attention to the top of the document.

A You asked me when these positions --

Q You said it was as of the 12th?

A According to what's on here.

Q I am calling your attention to the notation on the top.

A The notation on the top says the 14th.

Q The 14th being the date it was received?

A That's what I said to you.

Q I believe you indicated you told Mr. Berg to lock it up, is that correct?

gr2

D O N A L D V. M a c D O N A L D resumed.

DIRECT EXAMINATION CONTINUED

BY MR. HARRIS:

Q Good morning, Mr. MacDonald.

Can you hear me this morning?

A Yes. I hope you can hear me just as well.

Q Mr. MacDonald, do you recall at the end of the day on Friday you were discussing with Mr. Bernfeld Exhibit 1, Plaintiff's Exhibit 1?

A Yes.

Q I believe you testified Mr. Berg did not show you that document on November 14, is that correct?

A That is correct.

Q Did Mr. Berg tell you what was in the document?

A Roughly.

Q What did Mr. Berg say?

A I asked him to give me the totals, which he did. I didn't need to be told the name on one side. On the short side he assured me that there were no weak shorts, they were all substantial and no significant number.

Q You say, "weak."

In what respect to you mean weak?

A What?

Q When you say "weak" shorts, in what respect do you mean weak?

A In other words, mostly strong companies that were well able to stand in there.

Q Did Mr. Berg tell you that Allied had 90 per cent of the long position?

A I don't recall a figure of 90 per cent. You possibly could get an impression of around that figure.

Q Did Mr. Berg tell you anything else about what was contained on that document, sir?

A No, I don't recall anything else.

Q Did Mr. Berg tell you whether or not he also told Mr. Klein and Mr. Anderson what was on that document?

A He did not.

Q After your conversation with Mr. Berg, Mr. MacDonald, what, if anything, did you do about the matter that we are concerned with?

A This would be on November 14th?

Q Yes, sir.

A I believe we decided to call a meeting of

the board.

Q Who is it that decided to do that?

A I did.

Q Did you so call a meeting of the board, Mr. MacDonald?

A We had a meeting with the board.

Q Is this a special meeting held on November 14?

A I would have to see it, but I would say yes. That was not the normal date.

[1648]

3A

elrl MacDonald-direct

Q Mr. MacDonald, on November 14, prior to the board meeting, were you concerned about Allied's financial ability to maintain the position it had?

A No --

MR. O'DONNELL: Objection, your Honor.

THE COURT: The objection is overruled. You may answer.

A I had no inner knowledge of their ability, nor at that moment any reason to assume that they couldn't meet their obligations. Further, Allied was not our concern directly.

Q You knew on that day, didyou not, that if the price of cottonseed oil started to fall, that Allied would have to spend large sums of money to maintain its position?

A Of course.

Q Isn't it true, Mr. MacDonald, that on or before November 14 you knew or at least you believed that Allied was losing money in its business operations?

A I did not know.

Q Did you have an opinion on the matter at that time, sir?

MR. O'DONNELL: At what time? November 14?

Q On or before November 14.

A I didn't keep their books. They did a heavy volume of business, and I could not positively say that I thought they were losing money.

Q Isn't it a fact that you assumed Allied was losing money?

A Are we limiting ourselves to the futures position?

Q No, in general, sir.

A You started on this.

Q I'm sorry if I misled you. I thought my question was clear.

A No.

Q I am talking about Allied's general business operations, overall.

A They certainly would not appear to have lost on their futures, which I was more familiar with, that they were doing business and getting business in extremely heavy volume at prices below what somebody else might want to do business at. That is about all I could say. I couldn't say positively that they were losing money.

Q I didn't aak you if you could see it positively, sir, because I appreciate you didnot review Allied's books. What I am asking you is whether or not

you assumed or believed on or before November 14 that Allied was losing money.

A I had a feeling along that line, yes.

Q What was the basis for that feeling, sir?

A Oh, I would say that it was rumored or trade guesses at the price a piece of business was doneout without explanatory circumstances, you would say, well, gee, you add all these parts together and I don't see how he is doing this business at a profit. It doesn't mean that he might not be doing it at a profit.

Q But you certainly had some doubts?

A Yes, I had doubts.

Q Isn't it a fact that those doubts were rather common knowledge in the trade at the time?

A I don't know that.

Q Did you ever discuss those doubts with anybody?

A Did I?

Q Yes, sir.

A Not except possibly in a general conversation. Let me explain to you that when you, let's say, do business with the government, let's just group all the various departments of the government and call it the government.

would lose on one side he would make on the other.

Q That was fairly important, was it not, whether or not his position was a legitimate hedge?

A We were assured it was. We looked to see. It was that important.

Q Why was it important, sir?

A You are required, now we have to talk about about Haupt, because Haupt came between us and Allied. We had to assume that they were prudent businessmen and were sitting on top of it very closely. We looked to them to assure us, do you understand that?

Q I don't think that was responsive to my question, Mr. MacDonald. What I asked you is, it was pretty important in assessing Allied's position in the market to know whether or not their position was a legitimate hedge, isn't that true?

A Yes, it is true.

Q And isn't that true, as you were starting to say before, that if they were a legitimate hedge, then if the futuresprice went down they would make up their loss on futures on their cash oil position, so it would net out, is that right?

A It would certainly have a cushion one

Q On the other hand, if Allied was purely speculating and had 90 per cent of the long position that would be something to worry about, would it not, if the price started to fall?

A Worry about them again through Haupt.

Q That is because there would be no discussion if they were purely speculating and the price would fall and Allied would just have to come up with the money, is that right?

A They would have to come up with the money.

Q Right.

A But I might say, we had no right to assume it was purely speculative. They were also under the eyes of the Government agencies they were doing business with.

Q You assumed that Allied was a legitimate hedge, is that right?

A Yes.

Q Did you ever check?

A I think I went through that quite thoroughly about the various things we checked.

Q You mean the conversation that Mr. Berg had with Mr. DeAngelis in September?

A And with Ira Haupt & Co.

Q Isn't it a fact that Ira Haupt told you they received a hedge letter from DeAngelis?

A They had hedge letters.

Q That was the common form of a brokerage house getting information about a hedge from his customer, was it not, to get a hedge letter?

A It was a standard, equivalent to a standard form.

Q A hedge letter simply is a letter from the customer to his broker saying, this is to assure you that I am a legitimate hedge, is that right?

A And then your implication is that is all that is done? They take and file that way and forget about it?

THE COURT: Mr. MacDonald, I don't think you are answering the questions.

MR. HARRIS: Would you repeat the question.

(Question read.)

A That is correct. That is what the letter says.

Q Did you, Mr. MacDonald, as president of the New York Produce Exchange during 1963 ever seek to look at Mr. DeAngelis' contracts or cash oil position to make your own determination as to whether or not he was a legitimate hedge.

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MR. O'DONNELL: Your Honor, I object to this as repetitious. Mr. MacDonald was examined for a day by Mr. Bernfeld with respect to the year 1963, and took him up to November 14, 1963.

Now Mr. Harris is reverting to the entire year 1963, and I object to this repetitious examination on that ground.

THE COURT: The objection is overruled. He can answer that question. I do think you are going to have to telescope some of this, Mr. Harris.

MR. HARRIS: I agree, your Honor. I was just responding to his previous answer. Could you repeat the question.

(Question read.)

A I did not look at them personally.

Q Mr. MacDonald, on November 14, 2963 isn't it a fact that you personally believed that the price of cottonseed oil futures was too high, and that they would fall?

A As an analyst, yes.

Q And isn't it also true that on that date you believed that the activities of Allied Crude Vegetable Oil in buying cottonseed oil futures contracts was at least in a part responsible for the price being that high?

A Yes.

MR. HARRIS: Also present were Mr. Berg, the managing director and his assistant, Mr. Winheim.

THE WITNESS: That is correct.

THE COURT: Ladies and gentlemen, you heard who was present at the meeting. The easiest thing for me to say is that Mr. Vogel was not present, so that this evidence for whatever its purpose cannot be used in your consideration of the facts that involve him.

All right.

Q Just one question here, Mr. MacDonald:

I show you Plaintiff's Exhibit 12-G for identification and ask you if you recognize what that document is?

A This is October 3rd.

Q Are these the minutes of the Board of Managers held on October 3, 1963?

A That looks like a record of a meeting, yes.

Q Was that the regular monthly meeting of the Board?

A Held in October, yes.

Q Was Mr. Vogel present at that meeting either? Was Mr. Vogel present at that meeting?

A His name is not here.

Q Did Mr. Vogel attend very many meetings during 1963?

A Did he attend what?

Q Very many meetings as you recall during 1963?

A Almost all.

Q I see.

A I say almost because I'm not going to say 12 and then you find out it should be 11.

4B

Q But he did not attend the meetings of October 3 and November 14?

A His name is not on there.

Q Thank you.

If you would look at the first page of this Plaintiff's Exhibit 12H for identification, Mr. MacDonald, you will see there was a discussion, was there not, of an application regarding licensing --

A The whole first page is licensing, yes.

Q Was that subject --

THE COURT: Are you going to introduce that evidence?

MR. HARRIS: I really thought it would refresh his recollection, your Honor.

THE COURT: That is something else.

MR. HARRIS: That's why I have it in front of him.

MR. LIMAN: 12H, we are back to November 14?

MR. HARRIS: Yes.

THE COURT: All right. I didn't understand what you were doing.

All right, you are refreshing his recollection?

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MR. HARRIS: Yes, your Honor.

Q Was that -- I don't know that he needs refreshing of his recollection either.

THE COURT: I don't know whether he did either. That's why I was a little confused.

All right.

MR. HARRIS: Maybe I jumped ahead. I assumed these events were so long ago the witness wouldn't remember word for word --

THE COURT: Ask him about the meeting.

Q Was the subject of that licensing the first order of business that was taken up?

A Yes. This will show the general ordre of business.

Q So that this special meeting that was called to consider the situation that was produced or the result of which was discovered by Mr. Berg receiving the CEA report was not even even the first subje c t of discussion at the meeting?

A That would be quite corre ct. This is clearing away all the paperwork. I think you find that reasonably standard procedure.

Q I see.

Do you recall later on in the meeting,

Mr. MacDonald, that a control committee was appointed?

A Yes.

Q Do you recall any of the discussion that took place at the meeting prior to the appointment of the control committee that dealt with that subject matter?

A Before the meeting was there a discussion?

Q No. Prior to the appointment of the control committee at the meeting, was there a discussion.

A Yes. That's why a lot of this paperwork was done first. We get rid of the stuff that can be handled in four or five minutes and go on into what we knew was going to take a very, very long time.

Q What can you tell us of what you recall of the substance that took place at the board meeting of November 14 prior to the appointment of the control committee?

A You mean with reference to the appointment?

Q Yes.

A Well, first to establish the need to do it and then to establish the composition, the makeup of that committee.

Q What was said about the need to do it, sir?

A The very large open interest which you would find there in the minutes, of course, concentrated on

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the long side only.

Q Do you recall what people said about this subject matter at the meeting?

A On the --

Q Concentration of the long side of the market.

A Well, there would have been a discussion because that was really the basis of the request, to appoint a control committee.

Q Do you recall what you said, if anything, on that subject?

A Who?

Q You. Do you recall what you said on that subject, if you said anything at all?

A Well, of course I would have to say something.

Q Do you recall what you said?

A I requested the appointment of a control committee pointing out that I felt it very necessary that we have a small group look into all the situation and to see what steps were neded to be taken.

Q Do you recall saying why there was a need for a control committee other than you needed a small group?

A Well, incidentally, we had not known the

concentration of that position to that percentage point prior to this time. Now finding out that that concentration was there, then we would appoint a control committee to look into it, to see what could be done.

Q What did you say, if anything, about what the control committee would look for or look into? What would they be doing?

A They would look into all positions first on a confidential basis.

Q When you say, "They would look into all positions," do you mean they would find them out? Is that what you mean?

A They would send out a call to all clearing members.

Q To find out what positions they were clearing for which customers; isn't that right?

A That is correct.

Q Okay.

Do you recall if anybody else at the meeting discussed whether or not there should be a control committee and what it should or should not do?

A Let's say if we had 12 members in attendance, 12 people discussed it.

Q Do you recall at this date, sir, any

particular statement by any particular individual? In other words, do you recall what anyone said specifically?

A What I recall at this late date -- Mr. Harry Anderson got up verbatim, verbatim, no, I wouldn't. I knew he was in favor of it. I knew many of them were and many of them were sharply against it.

Most of the discussion was on the makeup of that committee.

Q What was the makeup of that committee, sir, as you recall?

A Eventually, after a very long discussion, it was myself, Mr. Berg and a long past president, member of the exchange, Mr. Salmonowitz. He was later unable to serve and there was another appointment then.

Q Wasn't Mr. Anderson originally appointed to the committee?

A Mr. Anderson was not appointed to the committee.

Q I would like to turn your attention to the top of page 3 of Exhibit 12H for identification, actually I guess the sentence begins at the bottom of page 2, and ask you to read that sentence starting with "In view of this," and ask you whether that

refreshes your recollection as to whether or not Mr. Anderson was originally appointed to the control committee.

A Mr Anderson was not appointed. Mr. Anderson declined to serve on the control committee becuase of a possible conflict of interest. I did not recommend any particular name, includng my own, to make up that committee.

Q You do see that the minutes record that Mr. Anderson --

A These are not the minutes.

Q What is --

A This is a report --

Q Let me finish the question. You have to wait until I finish the question.

A This is a --

Q What is Exhibit 12H for identification?

A I think when I started out I said this looked to me as a reocrd of those meetings, but it was never approved at a subsequent board meeting to my memory. Is that correct?

Q I don't know, Mr. MacDonald. I wasn't there.

A All right. Now --

Q May I ask a question?

A Yes.

Q Who --

MR. [illegible]: He hasn't finished his answer, I don't believe, your Honor.

THE [illegible]: I think he has.

Q Who recorded the information contained on Exhibit 12H; do you know?

A That would be the chap that would take it up, not exactly that way, Irving Hughes, I believe.

Q Would you look at the last page of Exhibit 12H, sir, and see if you recognize the signature and whose signature it is at the end?

A That's Mr. Berg's signature.

Q Did Mr. Berg have a practice of reading these documents over before he signed them?

A Yes.

Q You say Mr. Berg was mistaken when he signed the document that states that Mr. Anderson was appointed to the control committee, is that correct?

A Mr. Berg was mistaken.

Q I see. Thank you.

What about Mr. Doak? You will see that he's listed as being on the control committee, too.

A Mr. Doak was not on the control committee and -- how that ever got that way, I do not know and did not see it. Mr. Doak was discussed at length, but was not on that committee.

Q Was the control committee instructed by the board of managers of the produce exchange to send out a request for positions?

A The control committee in this instance was given all the powers and authority of the board.

Q And it was to report back to the board, was it not, when it finished its efforts?

A Very positively so.

Q Do you recall, Mr. MacDonald, pointing out at the meeting that one of the purposes of the control committee is to determine if there is any incipient dangerous situation in the market and to take steps to ward off that danger?

A Yes.

5A

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Q Do you recall further noting at the meeting that everyone in the trade was well aware of the concentration of the open interest?

A They were aware of the concentration, yes.

Q Do you further recall noting at the meeting that there was unusual types of trading that had been going on?

A Yes.

Q Do you further recall stating at the meeting that the old time traders --

A Perhaps I shouldn't have used the word "trading" there, I should have used the word "activity."

Q Fine. But you recall that general statemen[illegible] you?

A General statement, yes.

Q Do you recall also pointing out at the meeting that the old time traders had never seen anything like this before?

A The activity?

Q Yes, sir.

A Yes, sir. Or the type of activity.

Q What kind of unusual type of activity was it that you were referring to?

A Mainly the ex-pits.

Q Did anybody challenge your statement at the meeting and say you are wrong, Mr. MacDonald, there is nothing unusual about these ex-pits?

A In that volume I don't think anybody would have wanted to disagree, that it was something different.

Q What was unusual about the ex-pits was simply the volume of ex-pits?

A Yes, that was the only thing that you could look at being unusual.

Q Didn't you also believe, Mr. MacDonald, that the ex-pits were adding a churning effect to the market?

A No, they had no price effect whatever.

Q Maybe you misunderstood my word churning. Does churning mean price?

A Yes -- not even so much a change as a given appearance of activity. A churning market. Almost as if you'd say that about a creek or a river.

Q Mr. MacDonald, do you recall giving testimony on December 27, 1965 in an action in a 21A proceeding during which the trustee in bankruptcy of Ira Haupt was makding an investigation?

A Let's have that again.

ask me about something specific, I might be able to say they didn't have that power or they did have that power.

Q I'd like to call your attention to page 3 of this record, Exhibit 12H in front of you, starting with the first full sentence on page 3 and ask you to read that and see if that refreshes your recollection as to the powers that were given to the control committee?

A I think I mentioned that a little while back, they had all the power and authority of the board.

Q I'm sorry, you did say that. In other words, it had authority to get records and call for evidence and testimony, if necessary, and a number of other things beyond calling for a position call.

A We had all the power and authority of the board, yes.

Q At the time of the discussion concerning the direction to the control committee that it would send out a position call, did Mr. Berg tell the board that he had the information as to who held the long and short positions in the market on the CEA report

which he had locked up pursuant to your direction?

A He didn't have the full position. He had this. This did not show the carrying member, the clearing member.

MR. HARRIS: This, by the way, is referring to Exhibit 1.

Q But it did have the large long positions and large short positions by customer, did it not?

A That is correct.

Q Did Mr. Berg tell the board that he had that document, that information?

A I do not recall that he did, no.

Q Isn't it a fact that you didn't tell the board either?

A No.

Q So when the members of the board such as Comenzo, Crofton, Fashena, Goldfogle, Gowdy, Hyde, etc., voted to have the control committee set up and to send out a position call, they didn't know that the produce exchange was in possession of Exhibit 1, did they?

A No. Exhibit 1 would be only part of what we need d. I thought I explained that to you.

Q What else did you need, sir?

A What we sent out for. I believe it's spelled out right here in the minutes or this piece of paper.

THE COURT: Am I to understand that Exhibit 1 shows the long and the short position of the customer?

MR. HARRIS: Yes, your Honor.

THE COURT: Not of the clearing member.

MR. HARRIS: It doesn't have his clearing member's number, but it has the name of the companies, like Continental Grain, Bunge, Swift, and Allied Crude with the positions that they have.

THE COURT: It shows Allied's long and short position?

MR. HARRIS: Yes, sir.

THE COURT: All right. I just wanted to know what it was.

Q What was the control committee, as you said it spelled out in that document, seeking to ascertain by its position call? What information?

A What we were trying to get from them is the size of the position, the name of the customer, and the type of account. That was necessary because, as an

example, just to use one name of the list, we had no way of knowing who carried a position for Swift & Company or the Glidden Company.

Q For what purpose was the control committee seeking to elicit this information?

Q So that it would be more practical,much more practical to go through the member to approach his customer if any steps were needed; he would be able to do it on a personal basis. He dealt with the man. It would certainly cause less concern on the part of a customer, and if the president of the Exchange picked up a phone and talked to Swift & Company about his position and asked him to do something, they would immediately start getting concerned and worried, and you might have a panic on your hands.

Q What were the steps that you were considering taking with this information that the Control Committee was seeking to elicit?

A As soon as we had the total information in hand we could then analyze the situation, and if full or partial liquidation was needed, you try and make that voluntary, to have this clearing member go to his customer and ask him if he would be willing to liquidate part of his position and if so,at what price.

Q Mr. MacDonald, subsequent --

A If I may, I just found something here. You will find further along in the minutes that Mr. Doak was not on the Committee. It was suggested that Mr. Salmonowitz.

Q Yes, sir. Mr. Doak, the minutes indicate,

Q Did you ask him any information relating to those numbers?

A Only to see how fast they were coming in and how well they were coming. With only a couple of exceptions they were all in by the date, and that was what we wanted, on that date and of the total on hand.

Q Of course by the date, meaning November 20th, the market was closed?

A Yes.

Q So it didn't matter at that point?

A Didn't matter if somebody was late or not.

Q Mr. MacDonald, you recall, do you not, that a 25 point limit was imposed on the price of cottonseed oil futures trading on November 19th -- effective November 19th?

A Yes.

Q And isn't it true that one of the purposes of that price limitation was to give some breathing room to the Board of Managers, the Control Committee and the Executive Committee to try and solve the problem as it then existed?

A That would be part. In other words, to keep the market open. In other words, to put 25 points on instead of no points. No one essentially not keeping the

market open. There would be some trade. Putting on a narrow limit to keep the market reasonable until such time as we could get around to getting all these answers.

Q On November 19th while you were imposing this 25 point limit to keep the market open, as you just indicated, did you make any special attempt to get the rest of the answers that had not yet come in?

A Wasn't it November 18th that we put -- that we deliberated on the 25 point limit?

Q I think it agreed that the limit was imposed on the night of the 18th effective on November 19th.

A During the day of the 18th, yes. So let's then talk about what we had on the 18th, not the 19th.

THE COURT: Would you clarify, Mr. MacDonald, I'm not sure that I am completely clear about it, therefore I want it done. Maybe the jury is, but I'm not. What the 25 per cent limit actually is.

Q Can you explain what the 25 point limit --

THE COURT: 25 points. I said per cent.

Q 25 point limit that was imposed effective November 19th.

A Yes.

Q Can you explain what the limit means?

A 25 points in dollar value? One point is

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Q The 28th and the 19 were a weekend?

A Yes.

Q I am aware of that. But the Board meeting at which the Control Committee was appointed and told to make a position call was Thursday the 14th, right?

A Yes.

Q Friday was not a holiday, was it?

A No. I said there were two non-working days, a Saturday and Sunday.

Q Did the Control Committee ever meet, Mr. MacDonald?

A No.

Q To your knowledge did the Control Committee ever exercise any other of its powers as you enumerated them before, other than making the call for position?

A No. There was no reason of that later.

Q Mr. MacDonald, do you recall at the meeting of November 14th Harry Anderson indicated that he had spoken to Mr. Caldwell of the CEA?

A I don't recall that,no.

Q Did Mr. Anderson indicate to you at any time on November 14th, either at the meeting or before or after that he had spoken to Mr. Caldwell of the CEA?

A This was after the appointment of the Control

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Committee --

Q I am saying at any time, either before or after?

A I mean, are you talking about one day, though? I know that Mr. Caldwell called Mr. Anderson after the appointment of a Control Committee, assuming that Mr. Anderson was the chairman of that Committee. Mr. Anderson referred him to me.

Q That I believe was on November 15th, wasn't it?

A Yes.

Q But I am talking about November 14th, did Mr. Anderson ever tell you that he called Mr. Caldwell?

A No, he did not tell me that he called Mr. Caldwell.

Q Did you ever subsequently learn of the fact that Mr. Anderson called Mr. Caldwell?

A I don't recall that.

Q You just said that Mr. Caldwell called Mr. Anderson on the 15th, believing he was the head of the Control Committee?

A Yes.

Q And Mr. Anderson referred Mr. Caldwell to you, is that correct?

A Mr. Anderson told him he was not on the Control Committee and therefore referred him to me.

Q Did you learn that from Mr. Caldwell when he subsequently called you? Is that how you found that out?

A How I found out, I don't know.

Q How did you find out this information that Mr. Caldwell had called Mr. Anderson and Mr. Anderson referred him to you?

A From what Mr. Caldwell told me.

Q So you found out when Mr. Caldwell called you?

A Yes.

Q Mr. Caldwell called you on November 15th?

A Yes.

Q Do you recall the discussion you had with him during that conversation?

A There were two calls.

Q Let's take them one at a time.

A Let's take the first one.

Q Do you recall the first telephone conversation with Mr. Caldwell?

A Yes, Mr. Caldwell called and was very much concerned about an occurrence. You want me to explain that?

Q Yes, but perhaps before you do, so we will all be clear, could you tell us who Mr. Caldwell was on that date?

A Mr. Caldwell was a director of the Commodity Exchange Authority, which is a Division of the Department of Agriculture, located in Washington.

Q He was the head of the CEA, right?

A He was the head of the CEA.

Q Now why don't you tell us what Mr. Caldwell said to you and what you said to him?

A His first call was to the effect that he was now fearful of a corner, and that he wanted to discuss what steps we could or would take. I told him my concern was not a corner at all in view of the supply and demand situation; that also we had appointed this Committee and were working on it. He thought that was a good idea and very much worth a try.

That was the gist of the conversation.

Q Did you and Mr. Caldwell discuss the possibility of a squeeze on the market during the first phone call?

A No, because he may well have taken the two terms interchangeably. I don't, but he well may have.

buy a long to cancel out your short and if one group of people --

A To cover a short, yes. And you might have to do it up here.

Q So that the person holding the longs might be able to charge more and in effect squeeze a little more than out of the shorts, is that right?

A The difference could be between squeeze and a corner. And a corner I might not be able to buy it at all.

Q So for a corner you would have to get all the cash oil in the market?

A For all practical purposes.

Q And that is what you thought was impossible because of the new crop coming up, is that correct?

A That's right. And of course competitive oils. Because of the vast surplus at that time.

Q On November 14th or thereabouts, what was the next delivery period?

A The next delivery period would be December.

Does that give us the name of the company that owns the warehouse?

A Yes.

Q And the location of the warehouse is in the second column?

A Yes.

Q And the third column says, "Licensed Capacity Tank Cars."

A Yes.

Q What does licensed capacity tank cars mean?

A That means they have been licensed by the New York Produce Exchange, their tanks with a capacity of tank cars. That is what the column is.

Q With respect to the first item here, just as an example,for November 1963 opposite Anderson, Clayton, Jacksonville, Illinois, you have 500 tank cars under licensed capacity and you have 20, the number 20 --

A Outstanding warehouse receipts.

Q What is the relation of the 20 to the 500?

A Really nothing when you get right down to it. It is an empty tank.

Q That could hold 500?

A It could hold 500 and it held 20.

the defendants this document is being offered, your Honor?

MR. HARRIS: Your Honor, it is being offered against the ProduceExchange and the members of the Board as Board members.

THE COURT: All right.

MR. HARRIS: The only question is how should we mark this? It is Defendants' Exhibit 176. It is not on our list. We can offer it as our next number. It doesn't matter.

MR. O'DONNELL: He is welcome to it, your Honor.

MR. HARRIS: All right. Plaintiff's Exhibit 249.

Plaintiff's Exhibit 249 received in evidence.)

MR. HARRIS: At this moment I would like to point out on November 15th the total warehouse receipts uncancelled is 3,219.

Q A warehouse receipt is equal to one contract, isn't it?

A One contract.

Q Thank you.

MR. HARRIS: I would also like to point out

that Exhibit 1 states that Mr. Anthony DeAngelis holds, and this is as of November 14th, 5,428 December contracts on that day.

Q Mr. MacDonald, Mr. DeAngelis held those 5,000 contracts for the remaining several weeks until the delivery period began.

Isn't it clear that the shorts would have to find more oil than was at that point presently in licensed warehouses in order to deliver it on the Produce Exchange?

A No. The first one quoted there was a tank capacity of 500 and 20 outstanding receipts.

They could -- and since that was the first one quoted, I know very well as the New York office it would take them ten minutes to walk in with 480 warehouse receipts.

Q Wouldn't they need the oil first?

A Here is a tank with a capacity of 500. That doesn't mean it has only got 20 in it. That means it only has 20 in there --

Q I understand.

Did you know on November 15th whether Anderson, Clayton had the other 480 tank cars of oil in their warehouse on that day?

A On November 14th were 30,000 tanks of oil available and Anderson, Clayton probably one of the very biggest, not probably, one of the very biggest, I would say yes, I had every reason to believe that Anderson, Clayton would have it coming out of their ears.

Q That is an assumption on your part? You had no personal knowledge, did you?

A Did I go to Jacksonville, Illinois and Sherman, Texas to look at their tanks? No, I have a personal knowledge that they had these tanks.

Q Did you ask them whether they were filled with oil on that date?

MR. O'DONNELL: Your Honor, I object. He is arguing with the witness. The witness has said he knew about the total tank cars that were available.

THE COURT: I'm not sure that he is, Mr. O'Donnell. I don't think I understand the answer, at least to my understanding, as being responsive to the question that has been asked.

MR. HARRIS: Thank you, your Honor.

THE COURT: Until that is cleared up, I don't think it is argumentative at all.

Q I'm trying to find out from you, Mr.

MacDonald, whether you personally or, to your knowledge, anyone at the Produce Exchange ever checked with Anderson, Clayton and any of the other companies listed on Exhibit 249 to see whether they had on November 14th or thereabouts oil in their tanks equal to the capacity or how much oil they had in their tanks at all?

A No. We had a right to.

Q But you didn't?

A No reason whatever. If they didn't have it, I don't know where it would be in the country.

Q Would it surprise you or do you know, in fact, that of -- see there are 3,291 receipts outstanding on November 15th.

A Yes.

Q Do you know that on November 13th when Mr. Berg spoke to the CEA he told the CEA that he knew DeAngelis owned at least 2,500 of those receipts based upon the information he learned when they called in all the receipts?

A Yes.

Q If Mr. DeAngelis owned at least 2,500 of those receipts, they certainly couldn't be tendered by a short because he already owned them?

A No.

Q If you subtract you will see on the total licensed capacity now -- now we are talking about the total of all the tanks assuming they were filled. There is a number here of 8,322.

A Yes.

Q That is the total of all of this licensed capacity, assuming there was oil --

A At that time that moment, yes.

Q On that day?

A Yes.

Q If you subtract 2,500 from it, my math says to me I get 5,800.

A Yes.

Q Is that right?

A Yes.

Q Now, Mr. DeAngelis had, you recall I have said to you on November 14th, 5,400 contracts on that day.

That is getting pretty close, isn't it?

A Yes, it is getting pretty close.

Q If Mr. DeAngelis ended up holding more contracts than the total capacity of all the licensed warehouses, wouldn't that be a squeeze?

A No, let me explain that to you.

Q Please do.

A Not one of these locations, to the best of my knowledge, has ever licensed their total capacity. In other words, again, since you chose the first one, Anderson, Clayton has licensed a capacity of 500 tank cars. It would be a very impractical thing for anybody to license their total capacity with the very possibility that they might end up having their whole -- nothing but these warehouse receipts, and their business would have to stop. The business is built on the turn-over. So they always have -- I would have to make a rough guess and say much, much more on licensed capacity than they have licensed. I can be borne out on that when this shows a total licensed capacity of 8,300 tanks. Yet we know from statistics that the Continental Oil crop and the carryover was around 30,000 tanks.

In other words, plenty of other tanks in the country within a matter of two days could readily be licensed.

Q Let me ask you a couple of questions on that, Mr. MacDonald.

As I understand it, it is not all cottonseed oil that can be put in registered or licensed tanks and delivered on the Produce Exchange; isn't that right?

A You mean it is what?

meet?

A Round robin.

Q Telephone calls?

A No, I don't mean telephone calls. That piece of paper would be taken to each board member's office and he would sign it.

Q At that point did it go back to Mr. Berg or somebody in his office to send a formal notice to the applicant?

A It went back to Mr. Berg's office and he called him on the phone. Subsequently these are public knowledge posted on the bulletin board.

Q When you say "these," what do you mean by "these"?

A A list such as this, the licensed warehouse capacity of each location.

Q It's not simply you, everybody knew?

A Everybody, of course.

Q I see.

In any event, Mr. MacDonald, it takes some time and there's some procedural steps and some paperwork involved in licensing a warehouse, isn't that right?

A If that action was needed, that clock is stopped. We can do it in a day, we can do it in I

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suppose a matter of hours if a person comes in for licensed capacity.

Q Did you do it in a matter of hours during 1963?

A You're darn right we did if there was something that required that to be done.

Q Ididn't ask you if, I asked you if you did it in a matter of hours in 1963.

A There was never any reason.

Q I see.

How long did it take in 1963?

A Go through the normal channels, an application would come in. If there was a rush about it, you call a special meeting of the cottonseed products. If the applicant didn't indicate any rush whatever, you would hold a meeting as soon as it was convenient for the members and as soon as you could get a quorum.

Q In any event, Mr. MacDonald, is it your testimony that because of the ability of companies to get additional oil and to refine it and to put it in warehouses and to license those warehouses, that you were not concerned about the threat of a squeeze by Mr. DeAngelis in November 1963?

A No, because since you are limiting yourself

to December here. On November 14 they would have had each better than a month to make delivery. In other words, you can deliver after trading ceases, and trading doesn't cease on the first of December, so it was a matter of, going on memory now, approximately five weeks.

Q On November 14, Mr. MacDonald, did you have any opinion as to whether or not Allied was going to stop buying ocntracts?

A I had no opinion as to Allied, what he was or wasn't going to do.

Q As far as you knew, Allied could have continued to buy contracts on November 15 and November 18 and November 19; as far as you knew on November 14?

A As long as he could deposit the funds with Haupt and Haupt could deposit them with the clearing house, of course he could.

Q Allied could have built its position up in December oil even bigger, couldn't it?

A I would think so, yes.

Q If Allied had done that, didn't you think that there would be any threat of a squeeze at all in that the shorts would have to scramble around, find this oil, refine it, move it into new warehouses or

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AFTERNOON SESSION
2:05 p.m.

(In open court; jury present)

THE COURT: All right, Mr. Harris.

D O N A L D V. M a c D O N A L D resumed.

DIRECT EXAMINATION

BY MR. HARRIS:

Q Mr. MacDonald, you recall right before we stopped for lunch we were still referring to the first telephone conversation that you had with Mr. Caldwell on November 15?

A That is correct.

Q Isn't it correct, Mr. MacDonald, that during that phone call Mr. Caldwell asked you whether or not your committee was at all concerned by the fact that one individual held more than 90 per cent of the long side of the market?

A Is that a question?

Q Yes. Isn't it correct that Mr. Caldwell askedyou that?

A No.

Q Didn't you tell Mr. Caldwell during that conversation that you weren't concerned about the

situation and that it was "Just a good opportunity for people who wantedto sell oil."

A Yes, I said that to him.

Q What did you mean by that, Mr. MacDonald?

A I meant that we had a very large surplus and that it was a very good time for those who process and had it, to sell it. Just what it says there. I was referring to trade, not speculative.

Q You weren't referring to the fact that the price was about to fall on the futures market, were you?

A No. I had no knowledge of it about to fall.

Q Well, it was falling on the 14th, wasn't it?

A What day was that?

Q That was a Thursday.

A I don't recall a significant fall.

Q And it was falling on the 15th, wasn't it?

A 15 points or something?

Q I'm just asking what you recall. Do you recall it?

A Yes, I recall that on a Friday it was lower for the day, but not signicantly so.

Q Do you recall having a second telephone conversation with Mr. Caldwell on November 15?

A Yes.

Q Called whom?

A He called me.

Q To the best of your recollection what did he say when you answered the phone?

A He told me that the undersecretary was concerned and had advised him to call my attention to the appropriate rule covering the CEA authority over exchanges.

Q Did Mr. Caldwell direct your attention to that rule?

A Yes.

Q As best you can recall, what did Mr. Caldwell say in that regard?

A He said to me that the undersecretary had directed him to call my attention to that rule.

Q Do you recall what the rule stated in general terms?

A I did recall it then, yes. I knew it then. I would have to do a little refreshing at this minute, but I know what the gist of it was.

Q What was the gist of it?

A The gist of it was that if we didn't -- let's say carry out our obligations to see an orderly

market, it would go through a lot of those words, that they had the power to bring charges against us; and of course upon the charges being proven, they had a right to suspend us for a spelled out length of time. I think that is about it, briefly.

Q And that is what Mr. Caldwell told you the assistant secretary of agriculture asked him to tell you, is that right?

A Yes.

Q That was pretty serious, is that right?

A There was no directive whatever.

Q Did you view that as a serious event that Mr. Caldwell called you back to do this?

A Not necessarily so. Do you mean that that was an indirect way of trying to put pressure on? I don't believe so.

Q Do you recall anything else that was discussed during the second telephone converstation?

A I don't. I wouldn't say there wasn't any more, but it was a rather brief conversation.

Q Following that second conversation on November 15 did you have any conversation with any other board member of the produce exchange and report to them what Mr. Caldwell had just told you?

Q Do you recall Mr. Berg telling you that he had this conversation with Mr. Seitz?

A No, I do not.

Q I take it you didn't direct Mr. Berg to call Mr. Seitz on that day?

A I think you said Mr. Seitz called Mr. Berg. No, if it was the other way around, I didn't. Did Mr. Berg call Mr. Seitz?

Q I am looking for that.

(Pause.)

Q You were quite right. It was Mr. Seitz who called Mr. Berg.

A That would only be logical.

Q Okay. During confidential conversations with you on November 15th, Mr. MacDonald, did Berg make any suggestion to you that you ought to close the market?

A Did who make it to me?

Q I'm sorry. I meant to say Caldwell.

A No, he did not make any suggestion to close the market.

Q Mr. MacDonald, I would like to refer you to your 21-A testimony on December 27, 1965 at page 685. I will have to start the question at 864:

"Q Mr. MacDonald, in view of what you can see as an imminent insolvency as of November 13th, why didn't you heed the advice of the CEA on the 14th and 15th to close the market?"

Then there are some questions about Mr. Anderson. Then it says:

"Q And I take it that Caldwell was a little more affirmative with you, he told you to close it.

"A Yes."

A No, sir.

Q Do you recall giving that testimony?

A I don't care what the record says. I can tell you that is not true.

Q Is your memory better today, Mr. MacDonald, or was it better in December, 1965 about what happened during 1963?

A I didn't say anything about my memory. I said that record is not true.

THE COURT: But the point is, Mr. MacDonald, is that he has asked you the question, and you have to give him an answer.

THE WITNESS: I did not get any suggestion from Mr. Caldwell or order, rather --

Q I think the question is, was your memory better

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in 1965 than today when we are talking about events that took place in 1963?

A I would assume it was better than.

Q Mr. MacDonald, isn't it further correct that the reason you did not like Mr. Caldwell's suggestion was because you thought the price was too high, on the 14th and 15th of November?

A The price had nothing whatever to do with it.

Q I direct your attention to page 688 of your testimony on December 27th, Mr. MacDonald. You testified, do you remember the following questions and answers:

"Q You didn't like the reason that you got from the Department of Agriculture?

"A No, by no means."

A I didn't like the what?

Q Reason.

I will let you read this over yourself.

"Q All right. And you didn't like the price on the 13th and the 14th as the price at which to close out, is that correct?

"A The price I mentioned that when they wanted to close it out on that day it would have been two

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or three cents higher.

"Q That's right.

"A And without reason.

"Q I don't know why you say without reason. Was it a fairer price to close you out on the 20th when the price dropped three or four cents?

"A Yes."

Do you recall being asked those questions and giving those answers, Mr. MacDonald.

MR. O'DONNELL: Your Honor, may the witness' attention be called to the top of page 689 with respect to this same subject.

THE WITNESS: Yes, and I think it should go through the period ahead of that. But if you want to limit it to this, I will have to explain the reason.

Q I will let you explain the reason in a second. I'm not trying to cut you off. I am just trying to ask you the question, whether that refreshes your recollection whether you gave the answers to those questions in 1965, that in fact you thought the price was too high. And that is why you didn't like the Government's suggestion?

A I don't recall mentioning the price, but it may well have been. I don't recall that at all. I do

recall other parts of this. As I think, I'd have to reach back much further.

Q I don't want to take up everybody's time reading transcript.

A I don't want to take your time up either.

Q But you don't disagree that you said that in 1965, do you?

A I said I don't recall parts of it.

Q But your memory of the events of 1963 was better in December '65 than it is today; isn't that right?

A And the other basis, people get older, their memory isn't what it was.

Q No quarrel about that. Everybody's memory would be better in '65 than it is today.

A Yes.

Q Mr. MacDonald, is it fair to say that your concern about the market situation on November 15th was based upon the CEA's concern rather than any other factors?

A My concern was not the same as they were fearful, and I think if you read that, it would be confirmed, of a corner. I was not concerned about that there could be a corner.

Also you read Mr. Caldwell's memos, it clearly indicates that that was his concern.

Q Have you read Mr. Caldwell's memos?

A What you said to me there.

Q Passing that, I don't think you answered my question.

My question was:

Did you have any independent concern aside

from the fact that the CEA called you and told you that they were concerned?

A I had -- yes, I had an independent concern, yes.

Q What was your concern?

A The way the market was acting. This is a concern that built up over many months. The heavy ex-pits, the change in the news, in the developments at that time which very definitely changed the probabilities of a bull market.

Q What conditions had occurred which changed the probabilities of a bull market at that time?

A What occurred?

Q Yes, sir.

A I think, as I mentioned before, there was a very influential factor called the expectation of Russian buying. I would say offhand in the beginning I was a minority of one who attended not to believe in it.

As time wore on it became rather clear that there was not going to be at that time. That is the major change in the market factor.

Q When did that become clear, sir?

A To others, I would say offhand it was a matter

of days.

Q How did it become clear? Was there a press release or some event that occurred?

A In other words, people had started because of the delay saying, well, they can't be that bad off if they can wait a couple of months to get something to feed their people. It can't be so urgent, so pressing. They would have time to negotiate a bargain. They weren't going to have to buy under pressure. I think when you put all these minor things together, it is not a press release; press gossip, yes.

Q I see.

As I recall your testimony of Friday I thought you said that many people assumed that Allied was acquiring oil because of these Russian rumors, to fulfill contracts with the Russians.

A That is correct. There is the word assume in there.

Q Yes. Of course, you and everybody else knew at that time whether or not we sold oil or any other produce to the Russians required the approval of the President of the United States; isn't that right?

A No, it is not right. Not at all, no. We are not talking now about any Government program, we

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Q Wouldn't that issue have been very important in your assessment of whether DeAngelis could withstand any further price declines?

A No, because if he had done the Russian business, he wouldn't have had the money in hand overnight, therefore he would have had to have funds to carry him for that length of time.

Q So you assume Mr. DeAngelis had a lot of funds on hand on November 14 and 15?

A I assume he had adequate funds to do business, yes.

Q I thought this morning you told me that you knew or at least suspected that Allied was losing money in its business activities?

A That has nothing to do with having adequate funds. If I have a million dollars and I lose $100,000 of it, I still have adequate funds, don't I?

Q Yes, but I thought you told me this morning you believe that Allied had been losing money for two or three years on its export business?

A I said it looked that way, when you broke it down. But I also said I couldn't be sure that he was. He may have found some new factor. I didn't say

that positively, I don't recall.

Q In any event, you did not undertake to investigate Allied's financial condition on November 14th or 15th, did you?

A Not a brand new investigation at that time, no.

Q On November 14 or 15 you knew Haupt was holding the large or a large proportion of Mr. DeAngelis' futures concracts, didn't you?

A Yes.

Q Did you on November 14 or 15 call in Haupt and conduct an investigation of Haupt's financial ability.

A No, because I had presumed, from my knowledge of Haupt, that they had adequate financing; and that they I presumed were prudent businessmen.

Q And you also believed at that time, did you not, that as long as Haupt had enough money to meet the margin calls, they didn't have any right to worry aboutAllied's financial position, isn't that true?

A That is correct. We had to look to Haupt, not Allied.

Q So that if Haupt had money on November 14 or

15, even if Allied didn't have any money, that was not your concern?

A I wish we could put that a little differently. When you say I had no concern, our concern was did Haupt have adequate financing,and with no indication that they did not.

Q That was your primary concern, though, that is fair to say?

A That Haupt was protecting themselves, yes.

Q Did you or did you ordre Mr. Berg on November 14 or 15 to call in Haupt and look at their books and see if they had adequate financing or financial status?

A No.

Q You just assumed that Haupt had a lot of money, is that right?

A I think a firm that has been in business as many years as they have, you have every right to assume that they were prudent businessmen and knew that they were doing. I don't think that is a careless assumption at that time.

Q I didn't say careless or not --

A But it sounds that way.

Q I just asked whether you made assumption or did an investigation. I think the answer is you

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did not conduct an investigation, you made an assumption.

A No, we did not. I think they only had one a short time before that.

Q Once the market started falling on November 14 and 15 and then it continued to fall on November 18, Mr. MacDonald, you knew that Haupt would be required to put up a good deal of money to meet the margin calls, did you not?

A Yes. But I also presumed if the market rose they were collecting points from the clearing house. And they would only be putting backwhat they got already.

Q Did you know if Haupt had kept that money in a bank account or anything, that they had been collecting?

A Of course I wouldn't know what they did with the money. But again, I think I have a reasonable right to that assumption that they had the funds that they had already collected.

Q Did you call them and ask them?

A No, I did not call them and ask them.

Q Mr. MacDonald, there came a time, did there not, when you did call Mr. De Angelis in this period I am talking about?

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Q Had you requested Mr. Berg to get these numbers or did he just call you up out of --

A No, and that is, I don't recall now where he got the numbers. If he told me, I don't recall.

Q Did you have any discussion with Mr. Berg as to whether you should call Mr. DeAngelis or what the purposer of the call would be?

A No. I don't know whether he picked up something, a rumor or not. But he gave me these numbers and said you better talk to him, you carry more weight than I do. And he suggested to find outjust what his situation was. The market that day I think had broken, oh, the permissible limit is 200 points, I think it broke about an average of about 100 points. The first sizable move either way in months.

Q There was talk going around,was there not, that Allied was on the ropes, financially that day; is that correct?

A No, if it was, it must have been rumors. There is always talk in Wall Street. They love to talk. Perhaps the break allowed people to think everything accumulated here. Not that he would be in trouble on Tuesday or Wednesday, but sooner or later.

Q In any event, you called Mr. DeAngelis?

A Yes.

Q Can you now as best you recall tell us what you said to him and what he said to you during that phone call?

A I asked him how he stood, if the trend continued downward, how much could he take. He did not tell me that at that time he was already preparing to file for bankruptcy. He did tell me he had about an eighth of a cent to go.

Q And that would be 12-1/2 points?

A That's right.

Q Was there anything else disucssed during that conversation?

A Yes, I ~~told~~ him I was sorry. That was it.

Q On the 19th there was a price limit imposed

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reason.

THE COURT: All right.

Q Who did you speak to on the 18th in this connection, imposing a 25 point limit?

A I would have had to have spoken to Berg.

Q Anybody else?

A Yes. If you will let me finish.

Q I'm sorry.

A Harry Anderson. I don't recall beyond that, but I assume somebody must have spoken with -- I believe Mr. Vogel was the other signer of it.

Q Do you recall whether your telephone conversation with DeAngelis came before or after your other telephone conversations that you just described?

A We had already put the 25 point limit in, so this call would have had to come after that. In the evening, I thought I said, around suppertime.

Q After your telephone conversation with DeAngelis did you call Mr. Anderson, Mr. Vogel or Mr. Berg to tell them what had just transpired during your call with Mr. DeAngelis?

A I had already previously -- wait a minute, you are talking about this round robin call.

Q No. You had round robin calls, as I

understand it?

A Yes.

Q Then you spoke to Mr. DeAngelis?

A That evening.

Q He told you he could only take a 12-1/2 cent drop --

THE COURT: 12-1/2 points.

Q I'm sorry. 12-1/2 point drop. What I am trying to get at, Mr. MacDonald, is following that call with Mr. DeAngelis did you then make any calls to Mr. Anderson, Mr. Vogel or Mr. Berg to tell them what Mr. DeAngelis had just told you?

A I had called Mr. Berg. I did not call Mr. Vogel. There may have been calls during the night with Mr. Anderson.

Q But in any event there was no change in the 25 point price limit that was set for the 19th?

A No, there couldn't be.

Q I would like to show you Plaintiff's Exhibit 13-B for identification and ask if you can identify that document, Mr. MacDonald?

A This is the paper. This is a copy of that piece of paper.

Q That is a copy of which piece of paper? For

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MR. HARRIS: I offer this in evidence.

MR. LIMAN: No objection on behalf of Mr. Vogel.

MR. O'DONNELL: No objection, your Honor.

MR. MINNEROP: No objection on behalf of Mr. Anderson.

MR. FRYER: No objection.

(Plaintiff's Exhibit 13 received in evidence.)

MR. LIMAN: Can this document, your Honor, be read to the jury? I think again it doesn't make sense to have paper thrown into the record without the jury knowing what it is.

MR. HARRIS: Very well.

(Mr. Harris read from Plaintiff's Exhibit 13-B in evidence to the jury.)

Q Mr. MacDonald, didn't you believe it important for you to communicate to Mr. Vogel and Mr. Anderson before they signed that document and imposed a 25 point limit on November 19th, that Mr. DeAngelis had told you that he could only withstand a 12-1/2 point limit?

A What you mean to say is, did I think it important to have them rescind this document?

A And impose some other limit; yes, sir.

A No, I did not think it so because again I must remind you that we were not dealing directly with DeAngelis, we were dealing with Haupt.

Q You assumed Haupt would make up the difference when DeAngelis dropped out of the game, isn't that right?

A I assumed that since Haupt willingly and eagerly took the business, Haupt would have to meet its responsibilities. I would expect that I would.

Q Isn't it further true that Haupt did meet its responsibilities until it went bankrupt?

A What is that?

MR. HARRIS: Strike that.

MR. O'DONNELL: The answer to that is no anyway.

Q Let's get to November 19th, Mr. MacDonald.

You recall attending a meeting in the afternoon of November 19th at which members of the New York Produce Exchange and the Executive Committee were present?

A Yes.

Q Do you recall that there were also people from the Clearing Association Board of Directors present?

reasonably close.

However, they did not even think -- and this is my recollection of what I think they said -- they thought they could weather it. Some of this would come after we had arrived at the settlement prices.

Q Let me show you Plaintiff's Exhibit 13-A for identification and ask you if you can recognize this document? It starts here.

A Without reading it all the way through, yes, I recognize it.

Q What is this document?

A I suppose you would call it really a report of a meeting of the two committees with the representatives of these two houses.

Q And it is signed by Mr. Berg, isn't it?

A Yes.

Q And he was present at that meeting, isn't that correct?

A Yes.

Q I would like you to turn to page 2 here and read over this paragraph which is the third full paragraph on the page, and then I want to ask you a question about that paragraph.

A Yes.

Q Doesn't reading that over refresh your recollection that after the discussion it was apparent to all present that if the market did not advance substantially on the next day, that Ira Haupt would undoubtedly be in default to the clearing house and that Williston & Beane would probably be in default?

A Yes.

Q Thank you.

Wasn't it further the consensus of the meeting, and I'm talking about the meeting on November 19th, that the price would not go back up on the next day?

A Allied had filed for bankruptcy that morning. I think that would be a reasonable expectation.

Q Right. Wasn't it at that point, when you knew that not only was Allied out of the game but that Haupt was going into default the next day -- wasn't it at that point that you closed the market?

A Yes.

Q Wasn't that because you were afraid that Haupt's default would ultimately cause the bankruptcy or the great loss to other clearing members and other trade houses?

A That was quite true, but the impelling reason was the probable insolvency of Haupt, and under

the rules, the way I read them, this would then become an overwhelming factor, almost force majeure, as you would say, requiring us to close out the contract.

Prior to that date there was no -- this is my opinion -- no valid reason to cut across the legitimacy of a contract.

Q What is the force majeure that resulted from Haupt's impending default, sir?

A I didn't say that. I said the bankruptcy of Allied that morning which would pull Haupt down was the force, the major force, the overwhelming circumstance. Looking beyond that, presuming that Ira Haupt had gone into bankruptcy prior to our settlement -- and I'm not a lawyer, but it is my opinion that there could be no settlement of those contracts. Isn't that correct?

Q I am a lawyer and I'm not sure.

A My opinion, a bankrupt party becomes an estate.

THE COURT: Mr. MacDonald, I'm afraid that you have to answer questions on the witness stand. I don't think you can ask them and expect any answers. You are to give the answers.

THE WITNESS: All right, sir.

DeAngelis when he was the head of Gobel selling lard short in the west and buying fats in New York, that he got in trouble when he couldn't meet margin calls?

A What was this he was doing?

Q I'm sorry. I went too fast.

Isn't it correct that Mr. DeAngelis when he was the head of Gobel was selling lard short in the west against fats that he was buying in the east and that he guessed the market wrong and couldn't meet the margin calls and that is why Gobel went bankrupt?

A I don't know how you know that, I don't, certainly not from 1951. All I know is that he went into receivership.

Q Did you have any recollection in 1963 that that had to do with the futures market?

A At that time then?

Q Yes.

A Yes, it had to do with the lard futures market.

Q And he couldn't meet margin calls?

A That I think was it, yes, but not limited to that.

company, which then wasthe Adolf Gobel Company, was charged with receiving excess payments and delivering uninspected goods to the federal school lunch program and as a result thereof Mr. DeAngelis paid the government over $100,000 in damages?

A I may have remembered that there were a couple of items between him and thegovernment, one being the previous one that you mentioned and now this may have been the other one.

Q I think you said that you knew that Mr. DeAngslis had been suspended by the Chicago Board of Trade during 1963, involved in a wash sale transaction?

A That is published.

Q You knew that?

A Yes.

MR. HARRIS: I'm sorry, your Honor. One second. I think I may have almost completed this.

(Pause)

Q Did you know these facts that we have just discussed that you said you knew in September of 1963 at or around the time that Mr. Berg spoke to Mr. DeAngelis?

A Did I know all these facts?

Q The ones you said you knew. Obviously the

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A Yes.

Q And that action was approved at a board meeting on October 3, 1963 at which you presided; isn't that right?

A I know I approved and I know I presided. I'm not sure of the date, but it should be right around that time.

MR. LIMAN: May the record reflect what document is being shown to the witness, your Honor?

MR. HARRIS: It's Exhibit 12, I think G, your Honor, which are the minutes of the meeting of October 3.

Q Is that correct?

A Yes.

Q Did that ever happen before, Mr. MacDonald, to your knowledge, that the warehouse receipts --

A Not to my knowledge, no.

Q It never happened during the time you had served as a member of the board of the produce exchange?

A No.

Q You had been a member of the board ofthe produce exchange for some years prior to '63, isn't that right?

his having suggested any action.

Q That's right, his letters didn't say that. I am asking you, isn't that true, though?

A No, it is not true.

Q Okay. During the time you served on the board of managers of the produce exchange from several years before 1963 do you recall Mr. Weinstein ever sending any other letters, official letters to the produce exchange complaining or discussing market conditions?

A No, sir.

MR. HARRIS: No further questions.

THE COURT: Are you first up?

MR. O'DONNELL: Yes, I am, your Honor.

THE COURT: I think we should take our recess, then we will begin cross-examination. Ten minutes.

(The jury left the courtroom)

(In open court; jury present)

CROSS-EXAMINATION

BY MR. O'DONNELL:

Q Mr. MacDonald, is it correct that prior to 1963 you had spent your entire business career in the commodities market field?

A Yes.

Q And is it correct that your business career prior to 1963 started in 1933?

A Yes.

Q And that from 1933 to 1963 you had been with two firms, Bennett, which subsequently was merged into duPont, and Fahnestock, is that correct?

A Yes.

Q And your career with respect to both firms had to do with commodity transactions, did it not?

A Yes.

Q And you were a partner in the Bennett firm and after it merged with duPont, in the duPont firm, is that right?

A That is correct.

Q And you were a commodities manager or manager of the commodities department for the Fahnestock firm, is that right?

A That is correct.

Q Did you continue with the Fahnestock firm after 1963 as manager of the commodities department?

A Yes.

Q And did you continue to occupy that position in Fahnestock up until your retirement from the firm in 1961?

A Yes.

Q Is it also correct that throughout the 30 years prior to 1963 that you were in the commodities department you did not engage in any personal trading in commodities for your own account at any time?

A I did not.

Q Is it likewise true that all of the years that you were with the Fahnestock firm, that Fahnestock did not trade in commodities for its own account, as distinguished from trading for customers' accounts?

A They did not trade for their own account.

Q With respect to the New York Produce Exchange did you buy a membership on that produce exchange, sir, at some time?

A I had a membership, yes; eventually my own.

Q You paid for your membership, did you?

A Yes, sir.

Q Fahnestock did not pay for it, is that right?

A They did not.

Q Approximately when did you become a member of the New York Produce Exchange?

round figure.

A Around 400.

Q When you served as a member of the Board of Managers during any of these terms, Mr. MacDonald, were you paid compensation of any sort by the Exchange for serving in that capacity?

A No.

Q When you served as vice-president or president of the Exchange were you paid by any source for your services as vice-president or president?

A No.

Q The Board I believe in 1963 consisted of about 12 individuals, is that right, sir?

A The Board of Managers?

Q Yes.

A 12 managers and three officers.

Q Was the Board composed of any particular group or grupings within the membership of the Exchange?

A Yes. Under the rules the entire Board would be 15 in total; were supposed to be fairly apportioned among the various trade groups on the Exchange.

Q What did some of those groups consist of?

A Well, it was the grains trade, the steamship trade, the oils trade, pepper trade -- this would be

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in 1963 -- commission houses.

Q So is it fair to say that there was a cross section kind of representation of the membership on the Board of Managers?

A Required by the rules, yes.

Q And did serving on the Board of Managers involve the obtaining of any market information that the Managers had which was not available to other members of the Exchange?

A There was no information whatever available.

Q So the position of traders, as I understand it, were not known to members of the Board of Managers any more than they were known to the rest of the membership?

A They were not.

Q What obligations in 1963, if any, did the members of the New York Produce Exchange have, to your knowledge?

A Members of the Exchange, which included all, including the Board, had the obligation of observing the rules and regulations as they had agreed to in writing on their election to membership.

Q They signed agreements to that effect, known as agreements precedent to membership, is that

yes.

Q And as an exporter of oils?

A Very definitely, for a considerable period of time.

Q And as an end processor?

A Yes.

Q And as a supplier of oils and fats for U. S., United States Government programs?

A Yes.

Q And you knew Allied in 1963, did you not, sir, to be representing itself throughout the year as a hedger?

A Yes.

Q And you knew that it had so represented itself to Haupt, had you not?

A Yes.

Q With respect to Haupt, Ira Haupt & Co., that firm had been a member of the New York Produce Exchange to your knowledge, had it not, since sometime in the 1940s?

A To my knowledge, since, you might say I became active down there.

Q Did you know that also at the same time had

Q So the fees were paid by the members paying dues and by fees on particular transactions; is that correct?

A That is correct. There may have been -- there certainly was an anticipated extra income from the ground lease after the sale of the old building.

Q Did the New York Produce Exchange have any paid officials as a part of its staff?

A Any paid officials other than the Board?

Q The Board of Managers. None of the Board of Managers received any compensation; is that right?

A Officials I meant other than the Board. Yes, we had an executive director.

Q His name was?

A Robert -- Carl Robert Berg, Bob Berg.

Q He was a full time managing director of the Exchange; was he not?

A That is correct.

Q Prior to 1963 he had been the managing director of the New York Produce Exchange for many years, hadn't he?

A Yes.

Q Back in the late 1940s?

A It would be a number of years after World

War 2 because he was in service and he came with us after that.

Q From the late 1940s, about 1947, he had served as managing director?

A Somewhere in there, yes.

Q He had performed satisfactorily as far as you were concerned as managing director?

A As far as I was concerned, very definitely.

Q Through all those years?

A Yes.

I might add here that since he was not under contract, every Board would have to be satisfied. It wasn't just me exclusively.

Q So each Board of Managers reappointed Mr. Berg as managing director, did they?

A Each year at the organization meeting.

Q In 1963 how large a staff did the New York Produce Exchange have?

A At that time, to my knowledge, about 20 people.

Q Can you tell us what the makeup of some of those 20 people were?

A Yes. One of them would have been an assistant to Mr. Berg.

Q Was that Mr. Winheim?

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A Mr. Winheim, primarily in charge of the supervision of the employees. There was another man that was the caller and in supervision of the employees directly around the ring or on the quotation boards.

He also, I believe, acted as secretary. I would say those three might be said to be the only ones that held significant positions.

Q And the rest performed all of the Board marketing and clerical functions --

A Clerks, secretary, telephone operator, statistics.

Q In 1963 you were familiar with a gentleman by the name of Mr. Goldfogle, were you not?

A Very much so, yes.

Q Was Mr. Goldfogle one of the managers, one of the men who was on the Board of Managers that year of the New York Produce Exchange?

A Mr. Goldfogle was a member of the Board of Managers.

Q Was he a trader on the New York Produce Exchange representing Ira Haupt & Company?

A He was.

Q Had he been a member of the New York Produce Exchange for many, many years, perhaps as much as 30

Exchange Authority rebuffed Mr. Berg's request. Do you remember that?

A I do.

Q What Mr. Berg was requesting at that time was this confidential information about traders' positions; was it not?

A That is correct.

Q And the Commodity Exchange Authority in July 1963 told him, did it not, that there was no need to supply him that information at that time?

A That's right. There had to be a major reason to supply that information and they refused to supply it.

Q Was that a reassuring or a disturbing factor used in July 1963 when Mr. Berg told you about that?

A It was quite reassuring in view of the fact that they are charged also by Congress to look into any of these things, any happenings. And they are required to follow up themselves or they themselves to turn it over to a Commodity Exchange for further action.

Therefore, since none of that was done, I can tell you it was reassuring.

Q The New York Produce Exchange Clearing Association is an institution completely separate from that of the New York Produce Exchange; is it not?

of this association feel some apprehension over the increasing concentration of contracts in the hands of a relatively few clearing members," did anybody take any action with respect to this following your meeting with Mr. Weinstein and Mr. Boyer in September 1963?

A The board of the clearing house instituted a system of scale up margins.

Q So --

A The reason they did it, the exchange margins can never be less than the clearing house margins. So a raise by them was automatically a raise by us.

Q So the scale up margins was the action that was taken in response to the letter to you, the second letter to you by Mr. Weinstein?

A That is correct.

Q Did anybody complain to you about the action which was taken by the clearing association with respect to the scale up margin?

A Nobody complained to me, no.

Q Did it come to your attention that Haupt had complained to anybody about this subject, Mr. MacDonald?

A Yes, it came to my attention that Haupt

had complained to Mr. Berg, and Mr. Berg told him that it was a clearing house matter, to see Mr. Weinstein, and I understand they also complained to Mr. Weinstein. I know of no other complaints.

Q Nonetheless, the scale up margin was instituted by the association despite the Haupt complaint, is that right?

A That is correct.

Q Is it right, Mr. MacDonald, that following your meeting in late September 1963 on the subject of these letters that you had with Mr. Weinstein and Mr. Boyer, you never again received any letter from the clearing association expressing any interest, concern or request of any kind of you to do anything with respect to market conditions on the New York Produce Exchange?

A No.

Q In fact, Mr. MacDonald, would it be correct to say that up until the time you had Mr. Berg call the Commodity Exchange Authority on November 14, 1963 -- do you recall doing that?

A Yes.

Q Up until November 14, 1963, throughout the whole year 1963, up to that point in time, November 14,

1963, nobody had complained to you at all with respect to conditions on the cottonseed oil futures market in the New York Produce Exchange?

A No complaints whatever.

Q Did Ira Haupt ever complain to you?

A Not to me.

Q Did they ever complain, to your knowledge, to Mr. Berg?

A No.

Q Did the Commodity Exchange Authority ever contact either you or Mr. Berg, to your knowledge, and say that something should or should not be done with respect to the New York Produce Exchange?

A No.

Q You have been asked various questions under examination by Messrs. Harris and Bernfeld about corners, squeezes and manipulations.

Do you recall that?

A Yes.

Q Did you look to see in the fall of 1963 if there was a corner of the cottonseed oil futures market or cash market?

A Yes.

Q What did you discover in that connection

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in the fall of 1963? What did you find?

A I discovered there was no apparent manipulation,no manipulation. I wouldn't even call it no apparent.

Q Let's stick with corners. I'm talking about corners.

A What?

Q I'm talking about corners now.

What did you find, if anything, with respect to the subject of corners in the fall of 1963?

A There was absolutely no corner whatever, and I can assure you very definitely that we would have shorts on our neck in droves if we even approached the point of a corner or perhaps even an unruly situation moving against their interest.

Q Did you have any complaints from shorts in the fall of 1963 that they were being cornered in some way with respect to the cottonseed oil market?

A No complaint at all.

Q Why were you so sure there was no possibility of a corner? Can you explain that to the Court and jury?

A Yes, because there was an overwhelming

supply of all fats and oils in this country far, far greater than any prospects of moving it within one year.

We were at the peak or past the peak of the harvest. We knew exactly what we were going to have in those storage facilities that would be far and above any demand that could develop.

Q Let's see if we can get some of these figures straight that have been talked about.

There were a certain quantity of registered warehouse receipts that were in existence in the fall of 1963; were there not?

A There were.

Q Is it correct, Mr. MacDonald, that those registered receipts did not constitute all ofthe cottonseed oil that was available for the shorts in that year?

A Very small fraction.

Q So there was a greater amount of oil available, was there, in the fall of 1963 besides that represented by registered warehouse receipts?

A Very definitely.

Q Is that known as the visible supply of oil?

A Yes, that would be knwon as the visible

7A

Q Is it that 32 and a half thousand tank cars that would have to be concerned and controlled by one person if there was going to be a corner?

A Certainly a vast majority of it would.

Q And you had no complaints from anybody throughout the fall of 1963, as I understand it, that they were being required to scramble around to find some oil to fulfill contracts?

A No. No complaints, but no scrambling.

Q There was planty of oil around for everybody to satisfy the contracts, is that right?

A Right.

Q With respect to the fall of 1963, again, Mr. MacDonald, did you look to see if therewas any squeeze of the cottonseed oil market in that year?

A There was no squeeze at all, as was rather obviously the market reaction, the market behavior, etc.

Q Who would be the people who would be dqueezed, if there was one, the longs or the shorts?

A Well, with the term squeezed, I have never heard it used other than a short squeezed.

Q Did you have any complaints from the shorts in the fall of 1963 that they were being squeezed or unable to comply with their contracts?

A None whatever.

Q Were there ample offers to sell on the futures market shorts, in other words, inthe fall of 1963?

A Ample.

Q Did you look to see in the fall of 1963 if there was any manipulation or attempted manipulation of the cottonseed oil futures market?

A There was no manipulation nor attempted manipulation.

Q Why do you say that?

A By the action of the market itself and the obviously cautious buying of these brokers.

Q If there were a price manipulation or attempted price manipulation would you expect price movement?

A I would normally expect that there would be a reflection in prices, yes.

Q Was there any price movement of any drastic character of any kind, in the fall of 1963?

A There was no drastic disruption of the price structure of the way you put it let's say in a market letup.

Q Isn't it a factthat in the fall of 1963 the

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Q With respect to the price changes of fluctuations from day to day in the fall of 1963, did the Commodity Exchange Authority ever raise any question with you or Mr. Berg about that?

A No, sir, they did not. And I would say in view of their close observation they would be the first one you would expect it from.

Q Did the shorts during the fall of 1963 as they paid out this variation margin to Ira Haupt and our longs make any complaints about price fluctuation?

A No complaints whatever.

Q And so your conclusion in the fall of 1963 was that there was no price manipulation or attempted price manipulation, is that right, sir?

A No sign whatever of it.

Q With respect to this matter of the amount of contracts on the New York Produce Exchange satisfied by delivery in the fall of 1963, Mr. Bernfeld asked you on Friday whether you knew deliveries in relation or expressed as a percent of open interest on the first notice day were higher in 1963 than in 1962; do you recall that?

A I recall that, yes.

Q Is that a meaningful statistic to you, of any kind?

A Completely meaningless. It merely means the percentage delivered of what is left over, you might say.

Q Is it a fact that the deliveries of cottonseed oil in satisfaction of contracts expressed in terms of per cent of transactions, total transactions on the Exchange in 1963 were in the two to three per cent range?

A Certainly didn't exceed three per cent on a contract that would be an ideal medium for delivery.

Q Was there any reason why in the fall of 1963 you would expect deliveries to be as high as two to three per cent in cottonseed oil in relation to all of the transactions?

A Well, there was sort of a change in the times, so that oil could be brought around to New York from Florida by water; Florida having by that time become the biggest cotton producing state. And that oil could move into the New York area. Once it did, it didn't have too many places to go, unless getting delivery into Lubbock, Texas somewhere, and moving it into a direction. So some of that oil I must say was brought around for purposes of delivery. Therefore that percentage figure might have been a little higher than you would expect.

Q Therefore, it was the increasing volume of business on the east coast that led to the increase in the percentage, was it?

A Yes.

Q With respect to this increasing volume of ex-pits that you were asked about during 1963, as I understand it, you became interested in them in 1963 because of the incrreased volume of them; is that right?

A That's right.

Q Did you become concerned about them? Did they have any impact on price?

A They had no impact on price at all that I could see. I was interested enough, I'd rather use

that term, to have the Exchange follow through on every one as to its legitimacy, which I thought was one of our duties to do.

Q And you had Mr. Berg do that?

A I did.

Q And he satisfied himself, you told us, that all ex-pits were legitimate, after contacting the commission houses with respect to them, is that right?

A Contacting both commission houses, if there were two involved, as there normally are. In other words, one for the buyer, and one for the seller. And then the two sides would be expected to confirm the action.

Q Is it correct that at no time during 1963 did the Commodity Exchange Authority raise any question with you or Mr. Berg, to your knowledge, about the ex-pit transactions?

A None whatever.

Q Did Ira Haupt riase any question with respect to them?

A None whatever.

Q And Ira Haupt was engaging in them, was it not, sir? Was engaging in ex-pit transactions

in 1963?

A Very heavily.

Q Did any other members of the New York Produce Exchange or its Board of Managers ever raise any question about ex-pit transactions in 1963?

A There were no questions raised.

Q Was the increasing volume of the ex-pits in your judgment as you saw things in 1963 any evidence of a corner of the cottonseed oil market?

A No evidence of a corner at all.

Q Why not?

A Again, because there was no price change involved; and no significant effect in view of the total supply.

Q Were the ex-pit transactions evidence of any squeeze of the market?

A None whatever.

Q Why not?

A Well, there was no obvious price movement to indicate a squeeze or a coming squeeze.

Q Were the ex-pit transactions evidence of anybody attempting to manipulate, or manipulate the price of cottonseed oil futures on the market?

A I saw no sign of it.

Q Is it right that ex-pit transactions do not necessarily involve warehouse receipts registered with the New York Produce Exchange?

A That is correct. There can be many different kinds.

Q So whatever the kind of warehouse receipt that is involved in the ex-pit transaction, that represents the cash oil which is required for one of these 6-B ex-pits, is that right?

A Whenever there is a change of ownership, yes.

Q And is right that the members of the Exchange, the brokers, do not necessarily see the receipts transferred by the principals in one of these ex-pit transactions?

A We do not see it.

Q And is it also right that there is no connection between the revalidation of the registered warehouse receipts that you have spoken about and ex-pit transactions?

A No connection whatsoever. It was not done with any connection in mind at all.

Q Will you tell the Court and the jury again why the New York Produce Exchange did decide to have warehouse receipts revalidated?

A Yes. Many of them had been around due to a surplus for a number of years, since I think I mentioned before they are really a bearer certificate. They are not registered in any person's name. Storage was accumulating and not being paid to the warehouse. So our purpose in calling them in was to make sure, number one, that they were still there, still valid, still legitimate, and then turn around and make sure there was oil in the warehouses behind those receipts.

In other words, I think it was something, as

I look back now, that probably should have been done every couple of years, but there had never been a material question of the integrity of anybody. It was never thought of until it became a point of a considerable lot of money in the poitn of unpaid storage involved. That was really the one pocketbook item.

Q When the warehouse receipts were called in they wee revalidated by the New York Produce Exchange after checking into them to see that the oil was where it was supposed to be?

A They would check in to see if there was oil and believe it or not in many cases we found more oil behind the receipt than the receipt called for.

Q After this debacle occurred in the fall of 1963 were all of the registered warehouse receipts of the New York Produce Exchange good in the sense that the oil was there that was registered on the receipt?

A There was not one false warehouse receipt either issued by the Produce Exchange or possibly I should say even counterfeited. There was no receipts whatsoever in question.

Q There were a welter of counterfeit warehouse receipts that were not New York Produce Exchange

to your knowledge, in cottonseed oil?

A There were considerable numbers of bullish factors in the whole fatsand oils picture. There was an indicated sharp pickup coming inthe export business at sometime in the future, possibly in the springtime.

Q Was there a program at that time known as the food for peace program, sir?

A Yes, there was.

Q Was that a bullish factor?

A Very positively.

Q Was there the Russian rumors or Russian purchase of oil, that you told us about?

A That was a factor, a very definite factor.

Q There were a lot of people who believed that there would be a purchase by Russia of oil in the fall of 1963, were there not?

A I'd say a vast majority.

Q You were almost a minority of one on that subject, were you not, sir?

A That is correct.

Q Were there rumors of other exports to foreign countries in the fall of 1963?

A Yes. In addition to the food for peace

program, which is more or less donations, there was the PL480 program. I realize the jury may not quite understand what that means.

Q Public Law 480?

A Yes, the federal government. That was a major factor also.

Q Was it also known in the fall of 1963 to the traders and people interested in cottonseed oil that there were poor growing conditions in certain other foreign countries, Poland, Spain, Egypt, Syria, Israel, Yugoslavia, India, Pakistan, Turkey, other foreign countries?

A Very definitely. In several of those countries you might say there was almost no growing conditions.

Q Is it true that there was an increase in commodities business generally, not just limited to cottonseed oil, in the fall of 1963?

A There was a growing constant increase in the public interest in all commodities.

Q So all of those factors you would call bullish factors, would you, sir?

A All factors very bullish as time went on.

Q And bullish factors means that the price

elrf 2 MacDonald-cross [1860]

number one, of course, to prevent any panic, any rumors or fear or curiosity on the part of the whole trade.

Q Was it considered by you better at that time and more orderly for these positions of traders to be obtained by the members, the brokerage houses from their customers, than for you as president of the Exchange, or Mr. Berg as managing director of the Exchange to seek any such information?

A Very definitely, because if I had called them as the president of the Exchange, it would certainly do more than just arouse their curiosity. It could very well lead to what we might term panic trading in the market.

Q And panic trading in the market is something that is not desirable for an orderly market, isn't that so?

A By no means.

Q You also wanted the Control Committee to get the names of the brokerage houses?

A That is correct.

Q The brokerage houses that had the various positions of the various traders?

A Yes. And the point is that they could approach their customers on a much more personal basis,

but also that their approaching the customer would not create the same picture as if I had approached them in my position as president.

Q Is it also right that by getting the brokerage houses into this position of rendering position calls, that you could get them working with each other to see if there could be some voluntary liquidation of positions?

A That is correct. To get there, let's say consent or whatever you want to term it, to liquidate. And also what their thoughts were as to what level, what price.

Q Is it also right that the voluntary liquidation of contracts by members of an exchange is not an unusual thing?

A No, it is not.

Q It has been done many times on many exchanges, has it?

A Very definitely.

Q Mention has been made of the fact that this Control Committee that was appointed on November 14th, 1963 and sent out a position call returnable on or before November 20, 1963, that that Control Committee never met. Is there some reason why that Control Committee

Q Did he tell you that the Secretary of Agriculture wanted to close the market on Friday, November 15th?

A There was no mention of closing the market.

Q The subject was never mentioned in either of these calls by Mr. Caldwell, was it?

A No, sir.

Q Did he ever tell you that Ira Haupt wanted the market closed on Friday, November 15th?

A No.

Q Did Ira Haupt ever tell you it wanted the market closed on November 15th?

A No.

Q Did anybody tell you or even mention to you the possibility of closing the market on November 15th?

A No.

Q With respect to this message that Mr. Caldwell told you the Secretary of Agriculture wanted you to receive, did he say that there was any occasion for any kind of action by the Commodity Exchange Authority against the New York Produce Exchange for its conduct?

A No. My assumption would be that in telling me to read that, he just wanted me to be posted, to know. As I say, a lot of rules, one of them might

A In that period, very definitely, yes.

Q Was that a letter that was discounting the rumors that had existed up to that point with respect to Russia buying?

A It was.

Q Was that a letter which could have some downward impact on the market?

A Very disproportionate effect, yes.

Q Were there also rumors at that time, Mr. MacDonald, with respect to whether or not Haupt was willing to continue to purchase for Allied?

A There was a rumor that Haupt had rejected trades made for Allied on that day.

Q Was that again a factor which could lead the prices a little bit downward in a gradual way?

A Very positively.

Q When that 25 point limit was imposed during the business hours of Monday, November 18th, who did the 25 point limit benefit, if anybody, the longs or the shorts?

A Well, very obviously the longs.

Q Ira Haupt at that time was a long, not a short; was it not?

A That is correct.

that meeting you and the others present told Haupt how much money would be returned to them from the clearing association on the basis of the prices that you had set?

A Yes. I told them that we would return approximately three and a half million dollars.

Q And that was to come from the original margin that Haupt had on deposit with the clearing association after deducting the amounts that were required for variation margin; is that right?

A That's correct.

Q Did Haupt object to that?

A No. Haupt was very grateful and they assured me that our actions had saved them not from suspension under the 20 for 1 rule, but that it had saved them from bankruptcy.

Q Did they tell you at that time that by reason of the action taken by the board of the New York Produce Exchange or its executive committee, that they would not have to go into bankruptcy or be insolvent and could continue in business?

A They toldme that.

Q And they were very grateful about the action taken by the New York Produce Exchange; were they not?

A Extremely so because I think they realized then that we made an equitable settlement, certainly as far as they were concerned, and we were very positively not looking for a pound of flesh. That can be evidenced by the fact that we did return this money to them and we did try to save them.

A Prior to the date that we closed the market there was no overwhelming factor; there was in essence no reason to in view of the fact that we are empowered, if a step of that kind becomes necessary, to reach a fair settlement, but prior to that we must have a reason to do so, a real reason. Not an imagined one.

Q And you had no real reason, I take it from what you are saying, until you were informed of the Allied bankruptcy and the statements from Ira Haupt that they could stand no further price declines, is that correct?

A That is correct.

Q That occurred on November 19 and you closed the exchange on November 20, is that right?

A That is correct.

Q Was there any injury to the New York Produce Exchange by reason of the action that you took on November 19 and 20?

A Was there any what?

Q Any injury to the New York Produce Exchange?

A An injury to the exchange in the sense that that was the beginning of the end. The members, naturally -- it was an emotional thing. The exchange was over a hundred years old, it had always been considered

honorable, and yet all of that tradition, all of that honor of years and years, respect, went down the drain. The exchange was closed. That finished it.

Q Is it a fact that thereafter the shorts were not willing to do business on the exchange because they had not been able to reap the benefit of their bargain?

A They apparently took the position that the produce exchange contract was not a contract.

Q So subsequent to November 20 did you and Mr. Berg take any action to try to keep the exchange in the condition that it had been in prior to this time?

MR. HARRIS: Objection, your Honor.

THE COURT: The objextion is sustained. You are talking about action that was taken after November 20th?

MR. O'DONNELL: Yes, your Honor, to try to get the exchange resuscitated. With respect to our counts claim, I thought that was appropriate.

THE COURT: No, I don't see that, Mr. O'Donnell. I will sustain the objection.

Q In any event, as I understand it the exchange is now closed and has been for some time?

A That is correct.

Q Between November 20, 1963 andthe time of its closing it never had any kind of volume of trading on it worth talking about, did it?

A Nominal.

Q In these minutes there is reference to possible litigation against the exchange if the market were closed, do you recall that?

A Very definitely.

Q Was that litigation litigation that was anticipated would be brought by the long side of the market or the short side of the market?

A The short side.

Q Mr. MacDonald, you told us at the outset that you had never traded for your own account with respect to commodity futures, is that right, sir?

A That is correct.

A Let me explain this. The purpose of electing a person from the grain trade, from this trade, from that trade, was a fair apportionment, but once they were elected and once they sat at that Board of Managers table, they were not representatives of the grain, oil trade, they were representatives of the Produce Exchange. They were representatives of the grain trade simply as experts who could advise the whole Board on any matter that came up.

They were, however, essentially and basically representatives of the Produce Exchange.

Q What did you expect Harold Vogel to bring to this Board of Managers in the way of qualities?

A The same as I would expect of anyone, their long-range experience in the business, knowledge of it, ability. We always hope, even though an exchange -- it is made up of people, we are all human. Nevertheless, we always try to get the best on that Board, and the best -- I think we did reasonably well at it, and I considered it a great sacrifice on the part of many people.

Q Did you give Harold Vogel assignments from time to time?

A I don't recall that we had any situations that

came up. Certainly if there was, we had done that in the past.

Q Did you find him to be a consciencious Board member?

A Very definitely.

Q Did you expect your Board members to bring independance to their responsibilities?

A Oh, certainly. They weren't elected as rubber-stamps.

Q Did you find that Harold Vogel spoke his mind at Board meetings?

A Very, very definitely. Sometimes very lowly. I considered him quite an executive.

Q You testified that you would go to the floor of the Exchange from time to time and that you would pick up what may be called as trade or floor gossip about Allied's activities. Do you recall that testimony?

A Yes.

Q Did you ever report any of that gossip or rumors to Harold Vogel?

A I don't think so. I think my meetings with Harold, because of being in different ends of the business, would be pretty much Board room discussions and meetings.

Q When you say "being in different ends of the business," what do you mean?

A He, let's say, was in the office, an executive of the grain firm, and I was with a brokerage house.

Q You testified that in July of 1963 Mr. Berg had a conversation with the CEA which dealt with an effort to get information on Allied's position and the CEA wouldn't give it saying there was no need to.

Do you remember that testimony?

A That is correct.

Q Am I correct that you saw no reason to report that conversation to Harold Vogel?

A I did not.

Q Then you testified that at your instructions Mr. Berg had some conversations with Ira Haupt & Co. and Haupt said they knew what they were doing and were a hedger.

Did you see any reason to report that conversation to Harold Vogel?

A No. If there was anything significant, I certainly would have.

Q You testified also that you spoke to Mr. Goldfogle who had Haupt's wire on the floor and that

he promised to speak to Haupt about the Allied account.

Do you remember that?

A That is correct.

Q Did you see any reason to report that to Harold Vogel?

A No. If I reported all these efforts that the Exchange itself was making -- if I reported them to Mr. Vogel, I would certainly be under an obligation to report them to everybody.

Q And you saw no reason to report them to everybody and in my case to Mr. Vogel?

A No reason whatever.

4B

gr1 MacDonald-cross [1895]

Q And the same is true, is it not, of your conversations with the CEA during this period of the 14th or the 18th? Whenever they took place, you saw no reason to report that to Mr. Vogel, right?

A No, I saw no reason.

Q And the same is true of your conversation with DeAngeli on the 18th; is that correct?

A That is correct.

Q And that is true of other board members as well; am I correct?

A That is correct.

Q Mr. O'Donnell asked you whether, to the best of your knowledge, Allied held itself out as a hedger during this period.

Do you remember that question?

A Yes.

Q I am not interested in what Allied represented itself to be, I want to know what Haupt represented Allied to be.

Did Haupt represent to the Produce Exchange via Mr. Berg that Allied, its customers, was a hedger?

A They did.

Q You have been in this business a long time.

Can you tell me what you as a commodities

broker would do to satisfy yourself that an account was a hedger, particularly if it was a significant account, before you represented that the account was a hedger to an exchange?

A I would do very definitely satisfy myself -- after all, it's my money that is involved -- totally and completely. I would want absolute proof. I would also keep a running check on them through credit reports.

Q Have you on occasion yourself actually gone down to count physical commodities and records and so forth of a customer to be sure he was a hedger?

A In the old days you might say we counted the inventory, yes.

Q Did you trust Haupt when Haupt represented that Allied was a hedger?

A Haupt was an old line firm. They were unquestionably in the business before I was. They had a reputation. I had no reason whatever to think that Haupt through ignorance or anything else would not do the proper followup.

Q I want to ask you some information about this meeting of the board on November 14 which my client, Mr. Vogel, didn't attend.

elrf 2 MacDonald-cross [1908]

only buyers on that market?

A I wouldn't have any way of knowing who the buyer was. I mean, the ultimate buyer.

Q Is it a fact that at that meeting Harold Vogel never discussed his own company's self-interest?

A Never discussed his own company at all.

Q And you understood, did you not, that in closing the market you would be taking away the hedge that companies engaged in the business had secured on that market?

A So far as any short was hedged, we were removing his hedge protection, yes.

Q This was a serious step?

A It would be particularly true of the smaller processor, who after all, he would have bank loans and the size of the loan would depend on whether he was hedged or not.

Q You said that you were thanked by the Haupt representatives for taking this action and that they then sent a letter expressing this gratitude. Do you remember that testimony?

A I do remember that.

Q I'd like the record to have the actual documents. Is the letter you are talking about a letter

in evidence.)

(Mr. Liman read to the jury from Defendants' Exhibit 106 in evidence.)

BY MR. LIMAN:

Q Mr. MacDonald, one last irresistable question.

On November 19th when you were going through the agonies of this decision whether to close the Exchange, did you have a man there by the name of Professor Dahl with his overhead projector and curves and graphs telling you what to do?

A Somebody called what?

Q Dahl? Did you ever hear of him, Professor Dahl?

A I wish there was at that time.

MR. LIMAN: I have no further questions.

THE COURT: Mr. Fryer.

CROSS EXAMINATION

BY MR. FRYER:

Q I have a very few questions about my client Walter Klein.

A Thank you.

Q Was he elected to the Board as a representative of the oil trade?

A No.

gr5 MacDonald-redirect [1927]

A Yes.

Q They stayed there and watched and assisted?

A They didn't assist.

Q But they watched while the people figured out the money?

A Yes, because, as I said, we told them what they were going to do.

Q You are sure of that?

A Very sure of that.

Q Thank you, Mr. MacDonald.

Do you recall how the final settlement price was determined on the night of NOvember 19, Mr. MacDonald?

A Yes.

Q Can you describe how it was determined?

A Yes. What we basically did was take our closing prices, the soybean oil closing prices, which had no limitation on that, and then what had been the prevailing difference between the two oils back over a reasonable period of time, say two weeks. I will explain that to you. If the cottonseed oil had been selling at an average of 250 points over soybean oil, and that had ruled through thatperiod, you see, that was the basis of taking the closings on soybean oil, approximately so, adding the differential

onto it to arrive at the close of the cottonseed oil. In other words, not to pick a figure out of the air, but to pick something that was practical and fair to both sides.

Q That is because soybean oil futures and cottonseed oil futures historically ran in generally the same direction? There was a relationship --

A They went to the same direction at all times.

Q What you did on the 19th, you figured out by comparing what happened to soybean oil what would have happened to cottonseed oil futures prices had the 25 point limit not be imposed?

A That is correct.

Q Then you settled the contracts as approximately that price; isn't that right?

A Yes.

Q I believe you told Mr. Liman that the drop in settling price on November 14, 15 and 18 totalled about 1.27 points.

A Yes.

Q That was the three-day drop up through November 18?

A Yes.

Q Then, of course, on the 19th it dropped .25?

A Yes.

Q But that was the limit, right?

A Yes.

(Continued on next page)

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elr1 MacDonald-redirect [1930]

Q Isn't it a fact that you then settled the price on the night of the 19th by dropping it down another 1.15 points?

A Yes, because that would be what, soybean oil had dropped; do you understand me? I said that we took the price of soybean oil then, which did not have a 200 point -- didn't have a 25 point limit on it. We took what might have happened in cottonseed oil had there not been a 25 point limit.

Q So when you got done settling the price of the December future over the period November 14 to the closeout, it dropped 267 points, isn't that right?

A It dropped 267 points in a total of four days trading. In other words, it dropped somewhat over one day's possible fluctuation.

Q So the answer is yes to my question?

A Yes.

Q And the other months were also settled so that the total changeover for the four-day period was about 250 points?

A Yes. We took the formula individually on each month.

Q So that in effect what you did was you wiped out the effect of imposing the 25-point limit on

November 19, when you settled the contracts, is that right?

A That is correct.

Q That wasn't done to benefit the longs, was it, Mr. MacDonald?

A It wasn't done to benefit anybody. It was done to be a fair settlement.

Q Did that bring the price of cottonseed oil futures down to where you thought it should have been originally?

A I didn't set a price limit at any time either in my mind or any other way as to where it should have been at that time.

Q You recall yesterday telling me thatyou thought the price was too high on November 14, isn't that right?

A Yes, but I didn't say how too high.

Q I appreciate that.

A Yes.

Q With regard to your phone call with Mr. DeAngelis on November 18 when he told you that he could only take a 12 and a half point drop --

A Yes.

Q At that time you had reason to believe

that the market would drop more the next day, didn't you?

A I had a feeling that it would.

Q Did you call anybody at Ira Haupt & Company after speaking to Mr. DeAngelis and tell him that their customer was about to go bankrupt and not be able to meet the payments?

A No, I didn't think that was necessary.

Q Mr. Liman asked you some questions about the conversation Mr. Berg had with Mr. DeAngelis, the conversation you had with Mr. DeAngelis, and asked you whether youhad told Harold Vogel, and you said you didn't think it was necessary, as I recall, is that right?

A That is correct.

Q Mr. Berg had a telephone conversation with Mr. DeAngelis after their meeting in September, isn't that right?

A Yes.

Q And wasn't that telephone conversation to find out why Mr. DeAngelis hadn't reduced his position when he had promised to do so at the meeting with Mr. Berg?

A That's correct.

Q Mr. Berg spoke to Mr. DeAngelis and reported to you what happened during that conversation, did he not?

A He reported to me, yes.

Q At that conversation did Mr. Berg tell you that Mr. DeAngelis said, well, I didn't reduce my position because I have some large export orders?

A As I recall it now, he said he had, yes, let's say he had increased, whether it was export or not, and he had a reason for not reducing.

Q At the time Mr. Berg told you that, you didn't believe that story, did you?

A I would say I would want more than just his word or that. I mean, I would -- I would have preferred that he told us what he had, but there was no way to force him to do so.

Q Did you try and get any more information on that subject?

A Did we call him again?

Q Did you try, Mr. MacDonald?

A No, I did not talk to him.

Q Did you report the fact that Mr. DeAngelis had told Mr. Berg he would reduce his position, then did not reduce his position, and made upwhat you

thought was a story that was not true, did you report that information to Mr. Vogel or Mr. Klein?

A I didn't say I thought he made up a story. I said I wasn't inclined to believe it. I did not report it to Mr. Vogel and Mr. Klein, no.

Q You didn't think that was very important?

A Not to report to them, no. As I thought I specified before, then it would have to be the entire board.

Q Did you believe that everything you told Mr. Vogel as president had to be told to the entire board?

A No, I wouldn't have, but I would have preferred, if one thing I had to tell one member of the board, I could tell all.

Q Mr. Liman and you discussed Mr. Goldfogle, and I believe you said he was scheduled to become a partner of Haupt?

A Yes.

Q Did he become a partner of Haupt?

A Haupt went bankrupt.

Q So he didn't?

A He didn't. There was no more Haupt.

Q When you told us that you knew Mr. Goldfogle knew the situation at Haupt, was that an assumption

and that they didn't think anything was wrong, is that right?

A That's right.

Q That was an assumption on your part, was it not?

A Yes.

Q You made a lot of assumptions during 1963, didn't you, Mr. MacDonald?

You assumed that Haupt had a lot of money in the fall of 1963, is that right?

A That Haupt had it?

Q Haupt had a lot of money.

A That was not an assumption.

Q I thought you told me yesterday you never made an investigation of Haupt's financial condition?

A I said what?

Q Didn't you say yesterday that you never made an investigation of Haupt's financial condition?

A That is correct. But the New York Stock Exchange requires every firm to make available its last financial statement to any customer, any prospective customer. All exchanges require a firm to file a financial statement. It was no assumption.

Q Do you know when Haupt filed its financial

statement with the New York Stock Exchange?

A I know that they did, yes.

Q No, when in 1963.

A I could have walked into Haupt's office and said I would like to be a customer, would you give me a financial statement. There was no assumption.

Q Did you do that?

A I didn't have to. They sent one to the Exchange.

Q The Produce Exchange?

A Yes.

Q Did you look at it?

A Yes, I had a rough idea then of -- let me say I looked at the assets and the liabilities.

Q Do you know what the date of that financial statement was?

A No, but I believe it was comparatively recent.

Q So in November, 1963 it is your testimony that you knew Haupt had a lot of money, is that right?

A I knew how much, roughly how much money they had.

Q How much was that?

A I think it was about seven and a half million,

give or take a half a million.

Q You told me yesterday that you assumed that Tino DeAngelis was acquiring futures in anticipation of a Russian deal, isn't that right?

A That's right. Among other reasons.

Q What other reasons did you think he was acquiring futures contracts?

A For his ongoing business.

Q And I think you told us that you assumed that Haupt had a good deal of knowledge regarding their customer, Mr. DeAngelis?

A A good deal of what?

Q Knowledge regarding the activities of its customer, Mr. DeAngelis.

A That's right.

Q I think you also told us that you assumed Mr. DeAngelis and his company were hedging in 1963?

A Yes.

Q You also told us that you assumed that there was no manipulation of the market going on in 1963, that you could see?

A I had satisfied myself that there was none.

Q How did you satisfy yourself that there was none, sir?

elrf 9 MacDonald-redirect [1950]

A Yes.

Q If the longs don't want to accept delivery and start selling off, isn't it correct that the price tends to fall?

A The longs in total, in other words, if there were 100 deliveries and the receivers of those 100 deliveries decided to liquidate them, it would put pressure on prices and it would sell off in the absence of something else.

However, if there were 100 lots delivered and 50 were promptly stopped, the trend of the market would probably be upward. That is why I asked you the total.

Q This was the next part of the question. If the longs, on the other hand, instead of trying to sell off, if the oldest long stops the delivery and the next oldest stops, this is read as a bullish sign, isn't it?

A That would indicate a demand for the commodity. It would be a positive factor.

Q You knew in 1963, did you not, that some of the warehouse receipts involved in the large ex-pit trades that were going on were warehouse receipts that had been or were delivered on the Produce Exchange?

elrf 10 MacDonald-redirect [1951]

A Yes. If it is a warehouse receipt in circulation it would have been delivered on the Produce Exchange at some time.

Q And you knew, did you not, that one of the reasons for these ex-pits, or you believed, did you not, that one of the reasons for these ex-pits was to help finance the longs taking delivery of the receipts?

A Yes. And that is a business practice.

Q And you knew, of course, that one of the big longs, I forget what percentage he had, was Mr. DeAngelis?

A Yes.

Q Let me get that straight.

You knew that Mr. DeAngelis, among others, was engaging in ex-pit trading as a way of financing his acceptance of delivery?

A That is correct.

Q And therefore he was choosing the alternative of accepting deliveries, rather than selling of his long position?

A Yes.

Q And if he had sold off his long position the market would have gone down, isn't that right, or could very well have gone down?

A Let's say it could have been a factor. If

meeting?

A I didn't even know Mr. Forti by sight and there was a third party there, and I just presumed since he was sitting with them that it was one of the Haupt group. That is all I know up to this day as to why he was there.

Q I take it then Mr. Forti didn't participate in the meeting in any meaningful way as you can recall?

A If he participated I would have perhaps known he wasn't one of the Haupt people.

Q Mr. MacDonald, let's go back just briefly again to the Control Committee and the meeting of November 14th.

I believe you testified this morning, Mr. MacDonald, that one of the reasons that the Control Committee was appointed was to prevent panic.

A Yes.

Q I believe you further said --

A The Control Committee rather than having the whole Board of Managers do it. That was not the purpose of the appointment of a Control Committee.

Q Okay. I appreciate that.

Then I believe you further said that if

you had called the clearing members yourself as president of the Exchange, that that would have caused panic in the market.

A I think so. A request for positions is a comparatively normal thing on all exchanges. It wouldn't cause much concern at all.

Q Would that have been true had Mr. Berg done the calling?

A What?

Q Would that have been true, namely, that it would have caused a panic in the market, if Mr. Berg had done the calling?

A Probably, but to a much lesser extent. There again we would come -- that is part of his job. If it would be done, that would normally be the way it was done.

Q If the Board of Managers had resolved on November 14th that Mr. Berg should call everyone, you still think there was a danger of a panic in the market?

A I think so, yes.

Q Whereas if you write a letter then there is no danger of a panic in the market?

A No, because it is customary. It is a standard

thing to do. It wouldn't cause as much, no. The appointment of the Control Committee would be the thing that would --

Q Wait a minute. It was a standard thing to appoint a Control Committee and send out a letter to request a position call; is that what you are saying?

A Was it a what?

Q A standard practice.

A It was not standard to appoint a Control Committee. Itwould be standard from time to time to ask for positions, and that is standard on all exchanges. We did not do it very often because there was no reason to.

Q But other exchanges did ask for positions?

A Yes. A lot of the times it would be when you were coming down approaching the delviery month and they may only ask for that one month.

Q That would be because you might be concerned as to whether there was a corner or squeeze developing?

A Like to see if things were going to go out smoothly, yes.

Q When you received Mr. Weinstein's letters in the beginning of September, you recall in his letter he was concerned about the concentration in the

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

HARVEY R. MILLER, as Trustee in Bankruptcy of IRA HAUPT & CO., a Limited Partnership, Bankrupt,

Plaintiff-Appellant,

-against-

NEW YORK PRODUCE EXCHANGE, et. al.,

Defendants-Appellees.

Docket No. 75-5024

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ROBERT BLAIR, being duly sworn, deposes and says that he is over the age of twenty-one; that he is employed by Weil, Gotshal & Manges, the attorneys for Plaintiff in the above-entitled action; that on the 26th day of July, 1976, he served the Joint Appendix on each of the persons hereinafter mentioned by leaving a true copy thereof with the persons hereinafter named at their respective office addresses within the State designated by them for that purpose:

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O'DONNELL & WEYHER, Esqs.
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Walter C. Klein
140 Broadway
New York, New York 10005

Robert Blair
Robert Blair

Sworn to before me this 26th
day of July, 1976.

Notary Public

ROBERT F. BROCKBANK
Notary Public, State of New York
No. 31-4508675
Qualified in New York County
Commission Expires March 30, 1978

STATE OF NEW YORK, COUNTY OF ss:

I, the undersigned, am an attorney admitted to practice in the courts of New York State, and

Check Applicable Box

☐ Attorney's Certification — certify that the annexed has been compared by me with the original and found to be a true and complete copy thereof.

☐ Attorney's Verification by Affirmation — say that: I am the attorney of record, or of counsel with the attorney(s) of record, for . I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following:

The reason I make this affirmation instead of

I affirm that the foregoing statements are true under penalties of perjury.
Dated:

.....
(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF ss:

being sworn says: I am

Check Applicable Box

☐ Individual Verification — in the action herein: I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

☐ Corporate Verification — the of a corporation, one of the parties to the action: I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Sworn to before me on , 19

.....

.....
(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF ss:

being sworn says: I am not a party to the action, am over 18 years of age and reside at

On , 19 , I served a true copy of the annexed in the following manner:

Check Applicable Box

☐ Service By Mail — by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

☐ Personal Service — by delivering the same personally to the persons and at the addresses indicated below:

Sworn to before me on , 19

.....

.....
(Print signer's name below signature)

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Defendants-Appellees.

AFFIDAVIT OF SERVICE

Attorneys for Plaintiff-Appellant

WEIL, GOTSHAL & MANGES

767 FIFTH AVENUE
BOROUGH OF MANHATTAN, NEW YORK, N.Y. 10022
(212) 758-7800

To:

Attorney(s) for

Service of a copy of the within *is hereby admitted.*

Dated:

.....

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

☐ NOTICE OF ENTRY *that the within is a (certified) true copy of a entered in the office of the clerk of the within named court on* *19*

☐ NOTICE OF SETTLEMENT *that an Order of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court, at on* *19* *, at* *M.*

Dated:

WEIL, GOTSHAL & MANGES

Attorneys for

767 FIFTH AVENUE
BOROUGH OF MANHATTAN, NEW YORK, N.Y. 10022

To:

Attorney(s) for